

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 78792

CITY OF LAS VEGAS, a political subdivision of the State of Nevada

Petitioner

v.

EIGHTH JUDICIAL DISTRICT COURT of the State of Nevada, in and for the County of
Clark, and the Honorable Timothy C. Williams, District Judge,

Respondents

and

180 LAND CO, LLC, a Nevada limited-liability company,

Real Party in Interest

District Court Case No.: A-17-758528-J
Eighth Judicial District Court of Nevada

**PETITIONER'S APPENDIX
VOLUME 4
PA0563-PA0760**

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Elizabeth A. Brown
Clerk of Supreme Court

CHRONOLOGICAL INDEX TO PETITIONER'S APPENDIX

DATE	DOCUMENT	VOLUME	PAGE	RANGE
7/18/2017	Petition for Judicial Review	1	PA0001	PA0008
9/7/2017	First Amended Petition for Judicial Review and Alternative Verified Claims in Inverse Condemnation	1	PA0009	PA0027
2/23/2018	First Amended Complaint	1	PA0028	PA0044
2/28/2018	Errata to First Amended Complaint Pursuant to Court Order entered on February 2-[1], 2018 for Severed Alternative Verified Claims in Inverse Condemnation	1	PA0045	PA0061
2/28/2018	Second Amended Petition for Judicial Review to Sever Alternative Verified Claims in Inverse Condemnation Per Court Order Entered on February 1, 2018	1	PA0062	PA0076
3/5/2018	Order Granting Plaintiffs' Petition for Judicial Review in <i>Jack B. Binion, et al. v. The City of Las Vegas, et al.</i> , A-17-752344-J	1	PA0077	PA0090
4/17/2018	Petitioner's Memorandum of Points and Authorities in Support of Second Amended Petition for Judicial Review	1	PA0091	PA0152
6/26/2018	Errata to Petitioner's Memorandum of Points and Authorities in Support of Second Amended Petition for Judicial Review	1	PA0153	PA0199
11/26/2018	Notice of Entry of Order of Findings of Fact and Conclusions of Law on Petition for Judicial Review	1	PA0200	PA0227
12/13/2018	Motion for a New Trial Pursuant to NRCP 59 (e) and Motion to Alter or Amend Pursuant to NRCP 52(b) and/or Reconsider the Findings of Facts and Conclusions of Law and Motion to Stay Pending Nevada Supreme Court Directives	2	PA0228	PA0255
2/6/2019	Order <i>NUNC PRO TUNC</i> Regarding Findings of Fact and Conclusion of Law Entered November 21, 2018	2	PA0256	PA0258

DATE	DOCUMENT	VOLUME	PAGE RANGE	
2/13/2019	City of Las Vegas' Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims	2	PA0259	PA0272
3/4/2019	Plaintiff Landowners' Opposition to City's Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims and Countermotion for Judicial Determination of Liability on the Landowners' Inverse Condemnation Claims and Countermotion to Supplement/Amend the Pleadings, If Required	2	PA0273	PA0399
3/14/2019	City of Las Vegas' Reply in Support of Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims	3	PA0400	PA0483
3/18/2019	City of Las Vegas' Opposition to Plaintiff Landowners' Countermotion for Judicial Determination of Liability on the Landowners' Inverse Condemnation Claims and Countermotion to Supplement/Amend the Pleadings, If Required	3	PA0484	PA0562
3/22/2019	Reporter's Transcript of Motions	4	PA0563	PA0725
4/15/2019	Plaintiff Landowners' Request for Admission to the City of Las Vegas - First Request	4	PA0726	PA0737
4/15/2019	Plaintiff Landowners' Request for Production of Documents to the City of Las Vegas - First Request	4	PA0738	PA0749
4/15/2019	Plaintiff Landowners' Early Case Conference Initial Disclosures <i>For Phase I – Liability</i> Pursuant to NRCP 16.1	4	PA0750	PA0760
4/23/2019	City of Las Vegas' Motion to Stay Proceedings Pending Resolution of Writ Petition to the Nevada Supreme Court on Order Shortening Time	5	PA0761	PA0851

DATE	DOCUMENT	VOLUME	PAGE RANGE	
5/8/2019	Notice of Entry of Findings of Fact and Conclusions of Law on Plaintiff's Motion for New Trial	5	PA0852	PA0867
5/10/2019	Reply in Support of City of Las Vegas' Motion to Stay Proceedings Pending Resolution of Writ Petition to the Nevada Supreme Court on Order Shortening time and Opposition to Countermotion for <i>Nunc Pro Tunc</i> Order	5	PA0868	PA0874
5/15/2019	Notice of Entry of Order Granting the Landowners' Countermotion to Amend/Supplement the Pleadings; Denying the City's Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims; and Denying Landowners' Countermotion for Judicial Determination of Liability on the Landowners' Inverse Condemnation Claims	5	PA0875	PA0901
5/15/2019	Court Minutes	5	PA0902	PA0902
	Excerpts from Record on Review ROR000032- ROR000033 ROR002648-ROR-002670 ROR002823-ROR002831 ROR002854- ROR002863 ROR0025968 ROR0032657 ROR0034009 ROR0034050 ROR0034059 ROR035183-035186	6	PA0903	PA0955
	District Court Docket	6	PA0956	PA1050

ALPHABETICAL INDEX TO PETITIONER'S APPENDIX

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5/15/2019	Court Minutes	5	PA0902	PA0902
	District Court Docket	6	PA0956	PA1050
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AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that **PETITIONER'S APPENDIX** does not contain the social security number of any person.

DATED this 17th day of May, 2019.

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BY: /s/ Debbie Leonard _____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano, LLP, and that on this 17th day of May, 2019, a copy of the foregoing **PETITIONER'S APPENDIX VOLUME 4** was electronically filed with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system (E-Flex). Participants in the case who are registered with E-Flex as users will be served by the EFlex system and others not registered will be served via U.S. mail as follows:

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1 CASE NO. A-17-758528-J

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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180 LAND COMPANY LLC,

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Plaintiff,

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vs.

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LAS VEGAS CITY OF,

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Defendant.

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REPORTER'S TRANSCRIPT

16

OF

MOTIONS

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BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

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DISTRICT COURT JUDGE

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DATED FRIDAY, MARCH 22, 2019

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23

24

REPORTED BY: PEGGY ISOM, RMR, NV CCR #541,

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Peggy Isom, CCR 541, RMR

PA0563

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1 LAS VEGAS, NEVADA; FRIDAY, MARCH 22, 2019

2 1:36 P.M.

3 P R O C E E D I N G S

4 * * * * *

5
6 THE COURT: Good afternoon to everyone.

7 IN UNISON: Good afternoon.

8 THE COURT: Let's go ahead and place our
9 appearances on the record.

10 MR. OGILVIE: Your Honor --

11 MR. WATERS: Kermitt Waters -- go ahead. Go
12 ahead.

13 MR. OGILVIE: Sorry. Good afternoon, your
14 Honor. George Ogilvie on behalf of the City of
15 Las Vegas.

16 MS. LEONARD: Good afternoon, your Honor,
17 Debbie Leonard on behalf of the City of Las Vegas.

18 MR. HOLMES: Good afternoon, your Honor,
19 Dustun Holmes on behalf of the intervenors.

20 MR. BICE: Good afternoon, your Honor. Todd
21 Bice on behalf of the intervenors.

22 MR. WATERS: Kermitt Waters on behalf of 180
23 Land, your Honor.

24 MR. LEAVITT: James A. Leavitt on behalf of
25 180 Land, your Honor.

1 MS. WATERS: And Autumn Waters on behalf of
2 180 Land.

3 MR. HUTCHISON: Mark Hutchinson, your Honor,
4 on behalf of 180 Land as well.

5 THE COURT: All right. Once again, good
6 afternoon. And before we get started, are there any
7 preliminary matters we need to discuss?

8 MR. LEAVITT: Your Honor, we're ready to move
9 forward with our argument.

10 THE COURT: Okay. All right.
11 You ready, Mr. Ogilvie?

12 MR. OGILVIE: Yes, your Honor.

13 THE COURT: All right. So you have the floor,
14 sir. I think your motion is up first.

15 MR. OGILVIE: Thank you.

16 Your Honor, as the Court knows, this is City
17 of Las Vegas' motion for judgment on its pleading
18 pursuant to Rule 12(c) of Nevada Rules of Civil
19 Procedure on a motion for judgment on the pleadings.
20 The Court reviews the pleadings, the exhibits to the
21 pleadings and may take judicial notice of other
22 relevant materials. But the Court must make a
23 determination as a matter of law without considering
24 any factual contentions.

25 And I will state now, and I will -- I will

1 state it later as I anticipate significant, if not
2 substantial, amount of factual contentions to be
3 presented by the plaintiff in this matter. City of
4 Las Vegas objects to such factual presentation, and --

5 THE COURT: And when you say "objection to
6 factual presentation," what specifically are you
7 focusing on, sir, so I understand?

8 MR. OGILVIE: Well, as I review the
9 countermotions, your Honor, there's many factual
10 contentions being made by the plaintiff that are
11 outside the record of this -- outside of the pleading,
12 the four corners of the pleading, that's being
13 challenged by this Rule 12(c) motion.

14 Also, outside any exhibits because they're --
15 any exhibits attached to the pleading. And
16 specifically, your Honor, I want to make this clear
17 because I hear this from attorneys all the time. They
18 confuse what a pleading is, and Rule 7 is very clear
19 about what a pleading is. Rule 7 limits pleadings to a
20 complaint, an answer, an answer to a counterclaim,
21 third-party complaint, answer to a third-party
22 complaint, or a reply to an answer.

23 Those are the only types of pleadings that can
24 be considered by this Court on this motion for judgment
25 on the pleadings. And the reason I state that is

1 because I hear all the time attorneys of some
2 significant sophistication who have been practicing for
3 a long time conflating pleadings with filings, briefs.

4 So, again, the sole determination by this
5 Court at this juncture is a determination as to whether
6 the complaint sets forth allegations sufficient to make
7 out the elements of a right to relief. That is it.

8 And in making that determination the Court can
9 only consider those pleadings that are identified in
10 Rule 7, any exhibits and any properly judicially
11 noticed materials.

12 Now --

13 THE COURT: I understand that.

14 MR. OGILVIE: Thank you.

15 THE COURT: Okay.

16 MR. OGILVIE: So it's not a matter, as the
17 developer likes to argue, that the City doesn't want
18 the Court to consider the facts. The Court is
19 precluded from considering any facts on a motion for
20 judgment on the pleadings, such as we have today.

21 And the reason that I expect a lot of factual
22 contentions that are improper at this juncture is
23 twofold. One, the countermotions that were filed as
24 well as the need for a three-and-a-half-hour hearing
25 that the --

1 THE COURT: And talk about the countermotions.
2 I want to hear -- understand. And you can only -- you
3 don't have to spend more than a minute or two, because
4 I've thought about that too, from a procedural aspect
5 of the current posture of the case. What are you
6 saying there to me?

7 MR. OGILVIE: Okay. I'm glad you raised that.
8 So let's take a step back and look at the
9 posture of this case. So far there was an amended
10 pleading filed by -- an amended complaint filed by the
11 plaintiff, which included a petition for judicial
12 review and a complaint for damages for inverse
13 condemnation. The City filed a motion to dismiss prior
14 to my involvement in this matter.

15 The Court took that into -- under
16 consideration, had conducted a hearing in January 2018
17 and made a determination that it was going to bifurcate
18 those two components of this case. And the Court
19 entered an order that specifically stayed this.

20 THE COURT: Did I bifurcate or sever?

21 MR. OGILVIE: Well, you used the word sever,
22 but you referred to a -- the bifurcation rule under --

23 THE COURT: Okay.

24 MR. OGILVIE: -- Rules of Civil Procedure
25 rather than severance, so --

1 THE COURT: Was that done in the order? Or --
2 I mean, because I really don't know. And I don't mind
3 telling you this. I mean, I've looked at this case.
4 And I understand from time to time lawyers are in the
5 trenches, you know, and conducting trench warfare, and
6 that happens. It just so happens I'm at 30- or
7 40,000 feet and so my view is, really and truly, much
8 different as far as the procedural posture of the case
9 is concerned. I understand what you're saying. And I
10 thought about that well before you walked in here
11 today.

12 Because this is what we have going on right
13 now. We have the motion or the petition for judicial
14 review, and I do understand what my charge is under
15 those circumstances. And it's to make a determination
16 as to whether or not there's substantial evidence in
17 the record to support the decision and findings of the
18 Las Vegas City Council in that case regarding that
19 specific issue.

20 And then we have another -- we had a complaint
21 that was filed in this matter. They were in the same
22 case, and the complaint was seeking -- primarily based
23 on inverse condemnation. I understand that. There's
24 completely didn't standards of proof involved. It's
25 really and truly a different matter.

1 I realize that Mr. Bice filed a motion to
2 intervene on behalf of some adjacent property owners,
3 and that specifically went to the issues that were
4 involved in the petition for judicial review. And the
5 reason why I think that's important -- and I'm going to
6 have everybody talk about it. But as far as the
7 severed case, the severed action regardless of the
8 language I used, because bifurcation is different than
9 severance. We know that.

10 If -- now we're dealing specifically with the
11 issue as it relates to the inverse condemnation action.
12 I don't think Mr. Bice's clients would have standing to
13 even come into that dispute as it relates to the
14 inverse condemnation. That's a totally different
15 issue, totally different animal, different levels of
16 proof and the like. And I thought all about that.

17 And just as important, too, I thought about
18 this. Because the first thing I said to myself when I
19 look at any case, and I say, What is -- what is the
20 status of the pleadings in this matter procedurally?
21 We dealt with the petition for judicial review. I
22 realize there's a matter for reconsideration. I'm
23 going to issue an order today, so that will be taken
24 care of.

25 But that's one aspect of it. But here we have

1 a complaint. We have a motion to dismiss. We don't
2 even have an answer on file, right?

3 MR. OGILVIE: Correct.

4 THE COURT: So, you know, I'm looking at this.
5 And I'm saying -- and here's the one thing that I'm
6 always concerned about. I realize at times I have to
7 make very tough calls. I do. That's what we do as
8 trial judges, right? But I don't want there to be
9 error based upon the easy stuff.

10 MR. OGILVIE: I can appreciate that fully,
11 your Honor.

12 THE COURT: You see where I'm going?

13 MR. OGILVIE: I don't think anyone in the
14 courtroom wants that.

15 THE COURT: Right.

16 MR. OGILVIE: And if I can address
17 particularly in that regard the intervenors' --

18 THE COURT: Right.

19 MR. OGILVIE: -- participation. And I fully
20 understand and I support the Court's concern --

21 THE COURT: Right.

22 MR. OGILVIE: -- that allowing the intervenors
23 to --

24 THE COURT: And I respect Mr. Bice and his
25 partner. I've seen him more -- I didn't see him much

1 in construction defect because I don't think they
2 practice specifically in that area, maybe a couple
3 times. I remember seeing your partner one time on a
4 somewhat complex indemnity matter at some level. Maybe
5 seven, eight, nine, ten years ago.

6 But we have to come back and say, at the end
7 of the day, where are we. And that's why I kind of
8 focused on at the very beginning of the discussion
9 trench warfare; right? The fog of war. And we have
10 very capable litigators here today. I get that. But
11 sometimes the fog of war makes us forget where we're
12 at; right? You kind of lose sight of that.

13 So I want to make sure no matter what happens
14 today that we don't lose sight of, you know, the book,
15 the Rules of Civil Procedure. We don't push things
16 down the road that maybe shouldn't be decided today,
17 but should be decided at some point. Do you understand
18 where I'm going on that?

19 MR. OGILVIE: And your Honor is right in line
20 with where I was going. As I was directing the Court's
21 attention to Rule 12(c) and what we are here for today.
22 And my objection to the factual contentions that I
23 anticipate hearing from the plaintiffs today.

24 So -- and I appreciate the Court taking the
25 step back, because I would like to take a step back.

1 And, again, reinforce where we are today. Because as
2 you say --

3 THE COURT: And I want to tell you, I'm well
4 aware, because -- I am. I'm going to let you continue
5 on, but I know where we're at. And I know where we
6 should be. And one of the things I think in 13, close
7 to 14, years, I've never had any issues regarding where
8 we should be.

9 MR. OGILVIE: Okay.

10 THE COURT: That's probably the best way I can
11 say that.

12 MR. OGILVIE: So, I mean, technically pursuant
13 to the Court's order on the motion to dismiss that was
14 filed by the City 18 months ago, this portion of the
15 case is still stayed. Because the Court stayed the
16 inverse condemnation action until such time as there is
17 a final ruling on the petition for judicial relief.
18 Now, the Court's entry of the November 21, 2018,
19 findings of fact conclusions of law resulted in a final
20 ruling on the petition for judicial review.

21 THE COURT: Right.

22 MR. OGILVIE: So that would, in fact,
23 release -- remove the stay.

24 However, then the plaintiffs filed a motion
25 for reconsideration, which is, as the Court noted,

1 still pending, and I appreciate the Court indicating
2 that it's going to issue an order today.

3 Nonetheless, pursuant to the Court's earlier
4 order, the action on the inverse condemnation claims is
5 still technically stayed. We heard -- I have heard
6 complaints by the plaintiffs that the City is
7 attempting to drag its feet on this matter, so as an --
8 out of an abundance of concern that that complaint
9 would resonate with the Court, we filed this motion for
10 judgment on the pleadings prior to the entry of a final
11 order on the motion for reconsideration, which would
12 remove the stay.

13 So, I guess, technically, my filing of the
14 motion for judgment on the pleadings was a violation of
15 the stay. Nonetheless, again, what the City doesn't
16 want to be placed in a position where it is accused of
17 attempting to drag this out. We're not.

18 But where we are, again, is there is a -- an
19 amended complaint that we have now filed a motion for
20 judgment on the pleadings. There hasn't been an
21 answer, as the Court noted. There hasn't been, as a
22 result, any early case conference. There hasn't, as a
23 result, been any discovery conducted.

24 And now that gets to, again, where the Court
25 was saying current posture of the case is, and where --

1 and going back to the Court's original question to me,
2 what do I think about these countermotions. Well, the
3 countermotion for judicial determination on liability
4 is a -- essentially the plaintiff's motion for summary
5 judgment and is premature.

6 So that is my response to --

7 THE COURT: Because, in essence, it is a
8 motion for summary judgment --

9 MR. OGILVIE: It is.

10 THE COURT: -- 56 motion; right?

11 MR. OGILVIE: It is almost a regurgitation of
12 the motion for summary judgment that was filed by the
13 plaintiffs in December, which is the subject of some
14 dispute between Mr. Leavitt and me as to a briefing
15 schedule, and I don't know if that needs to be resolved
16 or not.

17 Nonetheless, it is a motion for summary
18 judgment. And for that reason, I state that that
19 motion is premature. And it should not be considered
20 by the Court at this juncture. And -- but moreover,
21 your Honor, I think once the Court properly evaluates
22 the motion for judgment on the pleadings, it renders
23 the other -- the countermotions moot. Because for
24 three separate and independent and very sound legal
25 reasons, the motion for judgment on the pleadings must

1 be granted. The first of which is the fact that the
2 developer has no vested right to redevelop the Bad
3 Lands Golf property.

4 The second is the fact that the developer has
5 waived any right to pursue the inverse condemnation
6 claims because they are time barred as a result of the
7 developer's predecessor's in interest position and
8 actions relative to that property dating back to 1989
9 and 1990.

10 This 15-year statute of limitations ran on the
11 claim on the developer's inverse condemnation claims in
12 2005, fourteen years ago. It's not even a close call.

13 The third reason that this Court must grant
14 the motion for judgment on the pleadings and dismiss
15 the inverse condemnation claims as a matter of law is
16 that -- is the determination by this Court that
17 Judge Crockett's decision has preclusive effect in this
18 matter.

19 THE COURT: Well, here's my question. And
20 I've thought a lot about this. I don't mind telling
21 everybody this. Understand, and if I -- I just want to
22 make sure what's going on in other courts. All these
23 other court issues that have been determined, whether
24 it's Smith -- wasn't it Sturman?

25 MR. OGILVIE: Judge Sturman.

1 THE COURT: And wasn't it Judge Bare also had
2 a piece of some sort?

3 MR. LEAVITT: Judge Bixler.

4 THE COURT: Judge Bixler, okay. And I
5 remember that from reading the points and authorities.

6 But weren't all these issues regarding
7 petitions for judicial review as a result of a decision
8 by the City council?

9 MR. LEAVITT: No, your Honor. Those -- the
10 decision by Judge Sturman and the decision by
11 Judge Bixler were in the inverse condemnation part of
12 each one of those cases.

13 THE COURT: Okay. Involving different
14 parcels?

15 MR. LEAVITT: Involving different parcels.
16 And in both of those cases, the Court denied the City's
17 motion to dismiss.

18 THE COURT: But the reason why -- but here's
19 the thing.

20 MR. OGILVIE: I'd like to argue my --

21 THE COURT: Wait. Here's --

22 MR. OGILVIE: -- position.

23 THE COURT: But you have to understand this.
24 I'm not going to be guided by what other judges do. I
25 just want everybody to understand that. I'm not going

1 to do that.

2 Secondly, the reason why I remember -- you
3 discussed it was Judge Crockett and his decision. But
4 here's what's important. This is what I want to have
5 discussed. Understand this, a petition for judicial
6 review is much different than a complaint for inverse
7 condemnation. There's completely different levels of
8 proof. I think we can all agree.

9 In a petition for judicial review, I think
10 it's important to point this out on the record, my
11 charge is limited; right? It really and truly is. To
12 make the determination as to whether or not there's
13 substantial evidence in the record to support the
14 decision of the administrative body. Nothing -- or the
15 City council or the County commission or whom ever it
16 might be; right?

17 Okay. Now, and I thought about this. I don't
18 mind telling everybody. Now, we're talking about a
19 much different animal. We're talking about an inverse
20 condemnation case. And it's a -- it's a case alleging
21 a taking by the City of Las Vegas based upon a myriad
22 of different actions by the City council.

23 Now, the standard of proof there is much
24 different. We can all agree; right? It's much higher.
25 It's by a preponderance of the evidence, right, versus

1 a lower standard of proof as to the substantial
2 evidence in the record to support the decision of the
3 administrative body, City council or whatever; right?

4 We can all agree. That's a different animal.

5 And so when I hear these arguments, I question
6 whether there's any preclusive effect because that's a
7 different animal. And I don't mind. And we can talk
8 about that.

9 And the reason why I think that's important, I
10 don't mind sharing with anyone my thoughts as we go
11 through this. Because one of the beauties -- I know
12 you were here two days ago; right?

13 MR. LEAVITT: Correct.

14 THE COURT: And I read everything and thought
15 about it. But when you have -- have a day or two to
16 reflect, you think about more issues and more ideas;
17 right? Because when I first went through it, I've been
18 so busy it was like a cram match. I thought I was in
19 law school again, reading, getting ready for an exam or
20 something like that. I really did, especially after
21 reading 75 pages of briefing in the countermotion;
22 right? Well, I guess the opposition and countermotion.

23 And I understand why it was, because there
24 were two separate issues. It's an opposition and a
25 countermotion, so I get that.

1 And trust me, I'm never burdened. I'll read
2 the pages. I don't care, you know. It is what it is,
3 because these are important issues.

4 So with that in mind, Mr. Ogilvie, tell me
5 why -- what Crockett did or even my own decision as it
6 relates to determining that there was substantial
7 evidence in the record to support the decision of the
8 City council vis-à-vis the petition for judicial review
9 matters when it comes to the separate claim for inverse
10 condemnation.

11 MR. OGILVIE: Thank you.

12 While I agree with you, we can all agree that
13 the claims for judicial review and inverse condemnation
14 are very different claims. They involve different
15 standards of proof, and the relief sought is very
16 different.

17 However, I think we can also all agree that
18 notwithstanding the difference between the standards of
19 proof and the relief sought, the findings that are
20 common to both are findings that are binding by -- to
21 this Court and to the parties. They are now the
22 findings that govern the rest of the case. And the
23 Court made very specific findings in that
24 determination, in the findings of fact and conclusions
25 of law, that are binding on the findings for --

1 whatever findings the Court makes on the motion before
2 the Court today.

3 And specifically --

4 THE COURT: And tell me why. You know,
5 because I thought about this. And I don't think this
6 has ever happened before that I'm aware of in
7 jurisprudence, but I tried to think of a scenario that
8 would be analogous to the scenario in front of us.
9 And -- because this never happens.

10 Sometimes you'll see civil tort cases that are
11 waiting for the criminal trial determination. And as
12 we know, this is a much different standard in a
13 criminal case. But hypothetically -- because I've
14 never seen this happen. But just hypothetically, if
15 you have a -- if you had a civil tort case and there
16 was a determination made by a jury in a civil court
17 case, how would that be admissible in a criminal trial,
18 subsequent criminal trial, where it has much different
19 evidentiary standards?

20 MR. OGILVIE: Let's flip it, because you're
21 bringing into account a sacred portion of our
22 jurisprudence, and that's a criminal defendant's right
23 to a fair trial and right to jury and right to --

24 THE COURT: We have all that in civil.

25 MR. OGILVIE: Well, yes.

1 THE COURT: Seventh Amendment versus Sixth and
2 all that.

3 MR. OGILVIE: But unless, the criticisms --

4 THE COURT: You know what I'm talking about
5 though? Just hear me out. It's a different level of
6 proof. That's what I'm talking about.

7 So how would a civil jury's determination be
8 admissible in a criminal case that has a much higher
9 standard of proof?

10 MR. OGILVIE: Well --

11 THE COURT: And that's the only analogy, I
12 don't mind telling everybody, I could think of. I
13 thought about that this morning when I was driving to
14 work when I was thinking about this case.

15 MR. OGILVIE: Okay. So let me -- let me
16 address the Court's question like this.

17 In that -- in the Court's hypothetical, we're
18 addressing two different proceedings. In this matter
19 we're dealing with one proceeding with a single trier
20 of fact. If you had -- let's take it in the context of
21 the Court's determination or the Court's hypothetical
22 of a criminal proceeding. Let's talk about a
23 bifurcated trial on capital murder where there is a
24 component that is the guilt phase, and then there is a
25 component of the penalty phase. The jury doesn't go

1 back and revisit and redetermine facts that were
2 determined by the jury in the guilt phase when it is
3 considering the penalty. The --

4 THE COURT: Okay. I get that. But my
5 question is the -- a petition for judicial review is
6 not a bifurcated portion of a claim for inverse
7 condemnation resulting in a damage claim for the taking
8 of real property. Those are different animals; right?

9 MR. OGILVIE: They are different animals.

10 THE COURT: Completely.

11 MR. OGILVIE: But if we look at specific
12 findings that the Court made in the -- on the petition
13 for judicial review, paragraph 35, the Court entered a
14 finding that a zoning designation does not give the
15 developer a vested right to have its development
16 applications approved. In order for rights to -- in a
17 proposed development project to vest, zoning or use
18 approvals must be the subject of further governmental
19 discretionary action affecting project commencement,
20 and the developer must prove considerable reliance on
21 the approvals granted.

22 There is no turning back on that finding, your
23 Honor. The facts, the factual underpinnings of the
24 petition for judicial review are the same factual
25 underpinnings, some of them, some of them are the same

1 factual underpinnings for the inverse condemnation
2 claims.

3 Now, the developer argues that the Court, in
4 determining the -- in ruling on the inverse
5 condemnation claims has to take into consideration the
6 totality of the circumstances. What we've responded to
7 them --

8 THE COURT: Well, why doesn't the Court?
9 Because it's my -- and the reason why I bring that up,
10 and there was a lot there. And we're kind of going
11 beyond, I guess, the thrust and focus of the 12(c)
12 motion, but I just remember there were allegations
13 regarding conduct of certain members of the City
14 council enacting specific ordinances, targeting the
15 developer defendant in this case. That's much
16 different. And this -- these types of things happen
17 post petition; right?

18 And so hypothetically if we have an inverse
19 condemnation scenario, and the other side will tell me
20 if I'm off on this, it just seems to me -- and we're
21 not dealing with -- I'm not dealing with the petition
22 for judicial review. I think I had a significantly
23 different charge as a trial judge under those
24 circumstances.

25 Here we are in full-blown civil litigation;

1 right? And what's relevant at the end of the day might
2 be premature at this time to decide. Because we don't
3 even have an answer on file. We can all agree with
4 that.

5 But it seems to me that potentially once you
6 get in the discovery, there's -- there could be a lot
7 going on, a lot of moving parts. But at the end of the
8 day in the "civil case," a lot of that might be
9 relevant. I mean, I don't know. But I thought about
10 it.

11 MR. OGILVIE: Okay.

12 THE COURT: Because it's a different case.

13 MR. OGILVIE: Let me answer the Court's
14 question like this: What is the taking that is being
15 alleged in this complaint? The taking is the denial of
16 the land-use applications by the City of Las Vegas on
17 June 21, 2017. Whatever --

18 THE COURT: I think it's much broader than
19 that. I think they're -- what they're saying is this:
20 Notwithstanding the application and the conduct of the
21 City council as it related to the application that was
22 subject to judicial review in this department, that
23 there's a myriad of -- myriad of issues and conduct
24 that the Supreme Court -- I'm sorry, the City council
25 engaged in that resulted at the end of the day a

1 taking. And that's what I think the case is ultimately
2 going to be about. I do.

3 And that's to me what it appears the direction
4 is. Because I'll say this, and I thought about it, you
5 have a scenario where there was a denial of one
6 petition for judicial review.

7 I don't think that has a preclusive effect as
8 it relates to a claim for inverse condemnation based
9 upon the conduct of any municipal authority or county
10 authority or whatever. Because that's what you're
11 asking me to rule as a matter of law.

12 MR. OGILVIE: No. I'm asking you to look at
13 the -- at the amended complaint before you, and
14 determine as a matter of law whether that complaint
15 sufficiently pleads allegations that could lead to
16 relief.

17 THE COURT: Okay. I understand that, under
18 12(c).

19 MR. OGILVIE: And that's -- that's very
20 different.

21 And what the pleading that is being challenged
22 alleges is that the City's denial of these particular
23 land-use applications was a taking. Irrespective of
24 the claims or the claims brought by the developer in
25 Judge Sturman's action, which they want to bring into

1 this action, the claims that were proceeding before
2 Judge Israel, which we don't have a judge currently on
3 that case, all of those -- it's -- it's truly amazing
4 the Byzantine nature of these pieces of litigation.

5 THE COURT: It is. It is. It really is. I
6 agree.

7 MR. OGILVIE: Nonetheless, those actions that
8 are being alleged by the developer against the City are
9 being brought in separate actions. They're not being
10 brought here, and they shouldn't be considered relative
11 to what the City council did on June 21, 2017. Because
12 that action taken by the City -- now, I'm not saying --
13 and I'm not even going to take a position today. I'd
14 like to do the research before I commit myself one way
15 or the other.

16 THE COURT: I understand.

17 MR. OGILVIE: I'm not saying at this point
18 that the motivations of the City as evidenced by other
19 actions is inadmissible, but what I'm saying is the
20 actual -- the purported taking is the action that was
21 taken on that particular day, and therefore the other
22 actions for substantive purposes are irrelevant and
23 cannot be taken into consideration by this Court for
24 purposes of this motion.

25 THE COURT: I understand. I do.

1 MR. OGILVIE: So, again, we're still at the
2 pleading stage. We haven't filed an answer. We have a
3 motion pending before this Court that for, as I stated,
4 three very distinct and sound legal reasons should be
5 dismissed.

6 And the first, again, is that the developer
7 had no vested right to have the applications approved
8 to redevelop the Badlands golf course. And I want to
9 emphasize the word "redevelop." Because the property
10 at issue has already been developed one time. And that
11 is what the developer in this action, the plaintiff,
12 purchased, was a golf course.

13 The developer's predecessor in interest
14 developed the Queensridge property with -- and
15 benefited by the fact that it was going to, and
16 ultimately did, develop the Badlands golf course. That
17 increased the property values of all the homes in the
18 Queensridge development that were, ultimately, sold.

19 So taking a step back to before one rock, one
20 square foot of dirt was graded, the developer, Peccole,
21 was developing a master plan and was going to sell
22 specific parcels to individual home -- home builders to
23 develop the property. The fact that the golf course
24 was part of that development increased the value by
25 which Peccole could sell the part -- the property

1 surrounding that golf course.

2 The value -- the increased value by that golf
3 course was inherent in the property sales made by
4 the -- this -- the plaintiff's predecessor in interest,
5 and it was -- that designation was sought by that
6 developer to increase those sales, to increase the
7 property value for those sales. It was also to avoid
8 having to build a park pursuant to the City's set-aside
9 requirements for green space.

10 The golf course satisfied the drainage
11 requirements. It satisfied the park set-aside
12 requirement. It also increased the value for which the
13 property -- the original developer could sell the
14 adjoining parcels.

15 So the law in Nevada is that the developer,
16 this plaintiff, steps into the shoes of its predecessor
17 relative to that.

18 Again, it was a golf course. The plaintiff
19 purchased a golf course. The plaintiff has the
20 opportunity to run a golf course. The City has taken
21 no affirmative action to deny that -- this plaintiff of
22 any right that it purchased relative to that golf
23 course.

24 THE COURT: Now, here's a question I have as
25 far as that's concerned, and I just looked at my notes

1 for my review. And here we're not talking about a golf
2 course. We're talking about 35 acres; is that correct?

3 MR. OGILVIE: Yes.

4 THE COURT: Okay. And the reason why I bring
5 that up --

6 MR. OGILVIE: The 35 acres is part of the gold
7 course.

8 THE COURT: But isn't it alleged -- I mean,
9 and the reason why I'm bringing it up, wasn't the
10 35 acres at issue unlike the rest of the golf course
11 rezoned to RPD7 in 2001 by the Las Vegas City Council?

12 MR. OGILVIE: The fact that it was zoned RPD7
13 has never been in dispute.

14 THE COURT: Okay.

15 MR. OGILVIE: As --

16 THE COURT: And the reason why I bring that
17 up, though, that's a little bit different than the
18 other parts of the golf course; right? Because I don't
19 think they were rezoned RPD7 in 2001 by the Las Vegas
20 City Council.

21 MR. OGILVIE: Mr. Bice can correct me if I'm
22 wrong, but I believe the entire golf course --

23 THE COURT: Was it?

24 MR. OGILVIE: -- is RPD7.

25 THE COURT: All right. I understand. So

1 there's a difference there. That's different than
2 PR-0 --

3 MR. OGILVIE: Well, that -- there's a
4 difference between the zoning and the designation. The
5 designation has an overlay of PROS. The zoning, and we
6 went through this at length on June 29 when we argued
7 the petition for judicial review. The -- just because
8 the zoning -- and then this is discussed at length in
9 our briefs -- that the zoning -- and, in fact, it's
10 part of the Court's findings of fact and conclusions of
11 law that it entered on November 21, 2018.

12 Just because there is a zoning of RPD7 doesn't
13 mean that there is a -- an entitlement to develop --
14 redevelop the golf course into housing. There is
15 still, as cited in our briefs, the City still has the
16 discretion to approve or disprove the land-use
17 application that was -- the land-use applications that
18 were before it on June 21, 2017. That was the Court's
19 finding. And because of that discretion, the law is
20 when the Court -- when it -- when a municipality has
21 the discretion, then no vested right to the development
22 applications exist. And I want to cite specifically to
23 the case law that I'm referring to.

24 In America West Development --

25 THE COURT: And I want to make sure I'm not

1 throwing you off. I think that was one of the issues
2 raised as it related to the statute of limitations,
3 that there was a change in 2001 and there was -- I know
4 there was an argument made, you stepped in the shoes.
5 Well, there was a -- based upon the change, I guess,
6 it's alleged that if there is a statute of limitations,
7 and I realize the plaintiff is not acquiesced on that
8 issue in any respect, but they said even with that in
9 mind, it became RPD7 in 2001. And as a result,
10 worst-case scenario, the statute of limitations still
11 wouldn't apply.

12 MR. OGILVIE: Well, I submit to the Court this
13 is one of the bright shiny balls that the plaintiff
14 wants to distract the Court with.

15 The designation, the PROS designation, that
16 the City is maintaining is the triggering event and the
17 triggering date for the statute of limitations. Goes
18 back to 1990. It has nothing to do with the zoning of
19 RPD7.

20 And, again, we fought this battle on June 29
21 whether or not zoning gave the City -- or gave the
22 developer a vested right to develop the golf course as
23 housing, and the Court made a specific determination in
24 paragraphs 35 through 38 of the findings of fact and
25 conclusions of law that, in fact, it didn't.

1 And I will cite the Court specifically to
2 paragraph 36 of the findings of fact and conclusions of
3 law:

4 "Compatible zoning does not ipso facto
5 divest a municipal government of the right to
6 deny certain uses based upon considerations of
7 public interest."

8 Citing the Tighe versus Van Goerken case, and
9 the Nevada Contractors case which affirmed the county
10 commission's denial of the special-use permanent, even
11 though the property was zoned for that use.

12 Again, in paragraph 34 of the findings of fact
13 and conclusions of law, this Court found that the four
14 applications submitted to the council, to the City
15 council for a general plan amendment tentative map cite
16 development review and waiver were all subject to the
17 City council's discretionary decision-making no matter
18 the zoning designation.

19 My point is, your Honor, we've already gone
20 through this zoning designation and the Court has
21 already made a determination against the developer on
22 that very issue; that, in fact, just because the zoning
23 is RPD7 does not, does not remove the City council's
24 discretionary decision-making. And because there is a
25 discretionary decision-making authority on behalf of

1 the City, that means, under Nevada law, that there is
2 no vested right to redevelop that property.

3 THE COURT: So are you saying that the City's
4 discretionary authority is a shield to an inverse
5 condemnation action?

6 MR. OGILVIE: Absolutely. You know why?

7 THE COURT: Okay.

8 MR. OGILVIE: Because if there is a -- if
9 there is a discretionary authority, that means there is
10 no constitutionally protected right. There is no
11 vested right. There is no entitlement. And I use
12 those terms interchangeably because that's what the
13 case law --

14 THE COURT: I'm going to tell you this. I
15 don't look at entitlement as the same thing as a
16 guarantee under the United States Constitution and the
17 State of Nevada Constitution. That's a different
18 animal, right, when it --

19 MR. OGILVIE: So the case laws talks about
20 entitlement and interchangeably, synonymously with a
21 vested right, and that's why I mention it. So let's
22 just focus on a constitutionally protected right or a
23 vested right.

24 And the case law is consistent. Whether it's
25 in Nevada or in the Ninth Circuit or in the United

1 States Supreme Court, without a vested right, there is
2 no -- there can be no taking. That is settled law.
3 Notwithstanding what the developer wants to tell you.
4 The developer would like to change the law. But what
5 that means, your Honor, is let's -- it has to be that
6 way; right?

7 Because if it weren't the law that there had
8 to be a vested right before there could be a taking,
9 that would mean that any decision by any municipality,
10 whether it be the City council, the County commission,
11 State of Nevada, State of California, whoever, if there
12 wasn't a standard, a threshold that had to be met
13 before there was a taking, any denial of any
14 application, any land-use application would result in
15 litigation.

16 But the United States Supreme Court has
17 determined, and the State -- the State of Nevada, the
18 Supreme Court, has agreed that in order for there to be
19 a taking, in order for a taking claim to even exist,
20 there must be a vested right to develop the property in
21 the manner in which the applicant is choosing.

22 The Court, this Court, your Honor has already
23 made a determination that there was no such vested
24 right because the City council still maintained its
25 discretionary decision-making on the four land-use

1 applications that it denied.

2 So ipso facto, if there is a discretionary
3 decision-making authority on behalf of the City
4 council, there is no vested right. And if there is no
5 vested right, there cannot be a taking. That is clear.
6 That is plainly the law throughout the United States.

7 So, again, the Court made specific findings
8 that, in fact, the City maintained -- retained its
9 discretionary decision-making authority for evaluating
10 these land-use applications. Because of those
11 findings, there is no vested right and there can be no
12 taking as a matter of law. And for that reason alone,
13 the inverse condemnation claims asserted by the City --
14 or by the developer in this action must be dismissed.

15 The -- and I know the Court says it's not
16 going to take -- you're -- it's not going to take into
17 consideration the findings by other Courts. But I just
18 want to mention that not only did your Honor make that
19 determination, in a separate matter before -- in
20 federal court before Judge Mahan, Judge Mahan made
21 the -- engaged in the very same analysis that this
22 Court engaged in and came to the very same conclusion.

23 THE COURT: But see -- and I have, you know, I
24 understand that. But I feel what's being overlooked is
25 this: That when I'm confronted with the petition for

1 judicial review, the Courts take on a much different
2 role than they take in ordinary civil litigation;
3 right? A petition for judicial review is focusing
4 solely on the actions of the administrative and/or
5 political body such as the County commission, City of
6 Las Vegas. It can be in a work comp case. It can be
7 in a myriad of different cases.

8 I'm sitting here reviewing it with this
9 really, I guess, narrow lens. That's probably the best
10 way I can say it. And I'm just making -- it's real
11 simple. Is there substantial evidence in the record to
12 support their decision? And if not, it's arbitrary and
13 capricious; right? Is there any plain error of law?
14 I'm done. I walk. I'm out.

15 Whereas, in full-blown civil litigation,
16 I'm -- here I am, and I'm looking at Rule 12(c). And
17 I'm accepting the complaint and the allegations in the
18 complaint as being true. And making a determination
19 that, Okay. Are there any set of facts upon which
20 relief can be granted? And that's it.

21 It's not that big of a, you know -- but it's a
22 much different analysis.

23 MR. OGILVIE: Okay. It is a much different
24 analysis. But I want to apply what the Court said, the
25 Court's concern to the specific findings that bind this

1 Court to a determination that the motion for judgment
2 on the pleadings must be granted.

3 And I want to go back to paragraphs 35, 36,
4 37, and 38 of the Court's findings of fact and
5 conclusions of law that were entered on November 21,
6 2018.

7 Paragraph 35, the Court's findings of fact
8 state:

9 "A zoning designation does not give the
10 developer a vested right to have its
11 development applications approved."

12 Is the Court going to take the position
13 that --

14 THE COURT: I never have positions. I mean, I
15 don't.

16 MR. OGILVIE: Let me state it a different way.

17 THE COURT: I can't have a position. I never
18 have a position.

19 I'll tell you what I'm thinking, right? And I
20 want to make sure it's based upon the law and supported
21 by facts. But I've never had a position.

22 MR. OGILVIE: Okay.

23 THE COURT: Zero position.

24 MR. OGILVIE: Let me state it differently.

25 I submit to the Court that just because there

1 is a different standard of proof between a PJR and an
2 inverse condemnation claim, that the Court cannot then
3 go back and state the contrary of that finding, that,
4 in fact, a zoning designation does give the developer a
5 vested right. The Court can't do that.

6 The Court, no matter whether it's an inverse
7 condemnation claim or a petition for judicial review,
8 the Court has made a finding that, in fact -- that is
9 consistent with all of Nevada law.

10 THE COURT: Okay. I think I have a really
11 good example for you. I really do.

12 You can take a worker's comp case; right? And
13 lo and behold both the civil case and the tort case and
14 the worker's comp case ends up in Department 16. I
15 have a petition for judicial review. And the appeals
16 officer in work comp said there's no causation. And
17 then I review it, and I said there's substantial
18 evidence in the record to support the finding of the
19 appeals officer.

20 Then we have the tort case that's in my
21 department. Are you telling me that the -- that
22 because I indicated and stated on the record that
23 there's substantial evidence in the record to support
24 the findings of the work comp hearing officer, that
25 that would have preclusive effect and that case could

1 never go to trial in front of a jury in Clark County?

2 MR. OGILVIE: Let me explain. Let me
3 distinguish.

4 THE COURT: Isn't that it?

5 MR. OGILVIE: No. It's not. It's not even
6 close.

7 THE COURT: Okay. I want to hear this.

8 MR. OGILVIE: If the Court -- if that's where
9 the Court left it, that it stated that there -- they
10 found that there were substantial -- there was
11 substantial evidence to support the arbitration
12 hearing's decision, that would be one thing.

13 THE COURT: The work comp.

14 MR. OGILVIE: The worker's -- yes. That would
15 be one thing.

16 But if the Court went beyond that, just went
17 beyond saying that it finds that there was substantial
18 evidence and made specific findings that, in fact, this
19 poor old woman was not injured on the job but, in fact,
20 was injured in the car accident that she was involved
21 in that day after work, that finding could not --

22 THE COURT: I would never make that finding.

23 MR. OGILVIE: Pardon me?

24 THE COURT: Because all I would do as the
25 trial judge is just look and see. There might be

1 findings there that supports the determination by the
2 appeals officer that there was no causation or there
3 was no injury or whatever. But that doesn't have
4 preclusive effect in a trial before a jury in the same
5 department if that happened to happen fortuitously.

6 That's my question. And I mean, I think
7 that's probably a better example than my first example.

8 MR. OGILVIE: Okay. Let me -- let me address
9 that a little bit different. And -- and I don't know
10 if the Court was hearing me.

11 If you -- if the Court went beyond a finding
12 that there was substantial evidence before the hearing
13 officer to support his decision, that would be one
14 thing. I would agree with the Court, that that does
15 not have preclusive effect. But if the Court in
16 summary judgment granted partial summary judgment,
17 making a finding that, in fact, the injuries didn't
18 result from the -- some alleged on-the-job activity,
19 but it resulted for something else, that, in fact,
20 would have preclusive effect.

21 THE COURT: Yes, but that's a different
22 standard; right? That's not a petition for judicial
23 review. You're talking -- they're talking about a
24 full-blown injury causation analysis. I'd have to do a
25 Williams and Morsicato and all those wonderful things;

1 right? That's a different issue.

2 I'm just talking about a petition for judicial
3 review. And see, I don't mind telling everybody this
4 because I realize that this is not a -- this is a
5 different case. I mean, I can't remember at any point
6 in my career as a judge that I've had both a petition
7 for judicial review, and the underlying lawsuit in my
8 same department.

9 But as we've gone through this, and that's --
10 instinctively that's why I haven't made the final
11 determination on the petition for rehearing. Because
12 one of the things I do understand, and I feel very
13 strongly about this -- and we got a great record. And
14 I think that no matter what happens, the Supreme Court
15 will know exactly what I was thinking about and
16 considering. And that's a paramount significance for
17 everybody.

18 And then -- and they will know what I was
19 confronted with and what I was thinking about. They
20 tell me I make pretty good records. I don't mind
21 saying that. They do.

22 But it's important. It really is. And so as
23 a trial judge, ultimately, this is what you want to be:
24 You want to be fair. And you don't want to make a --
25 you got to be cautious in your decision-making. And I

1 realize what is on my plate right now.

2 So whatever decision -- I mean, I feel
3 strongly about and stand by my earlier decision as it
4 related solely to the petition for judicial review.
5 However, I don't mind saying this: I don't think that
6 in light of the different evidentiary requirements,
7 that that has an impact just because I happen to have
8 the same parties in front of me on a totally different
9 litigation theory, i.e., a taking for inverse
10 condemnation where there's a claim for damages.

11 That's what's going on. I just happened to
12 get it. But -- and what I mean by that is it's in this
13 department. But those are different issues. They are
14 different issues. I don't mind saying that for
15 anybody.

16 MR. OGILVIE: Taking that statement by the
17 Court to -- and applying it to the Court's findings
18 that I'm referring to in paragraphs 35 through 38 of
19 the Court's findings of fact and conclusions of law,
20 that would allow this Court to make a completely
21 contrary determination that compatible zoning does not
22 ipso facto divest in a municipal government of the
23 right to deny certain uses based upon considerations of
24 public interest. That would allow -- what the Court is
25 saying would allow this Court in the inverse

1 condemnation claims to make a finding that compatible
2 zoning does ipso facto divest a municipality of the
3 right to deny certain applications.

4 THE COURT: Well --

5 MR. OGILVIE: And that is the difference
6 between --

7 THE COURT: I'm going to tell you -- I'm going
8 to tell you: I look at it so much differently.

9 Because number one, my thrust and focus is
10 this on the issue regarding the petition for judicial
11 review: Are the sole actions of the Las Vegas City
12 Council as it relates to that one petition? That's it.

13 Now, and it's a much lower standard of proof.
14 If this complaint was filed in another department in
15 front of another trial judge, I can tell you this:
16 They would not be concerned about the petition for
17 judicial review.

18 Case in point. If this -- if Judge Sturman or
19 Judge Bixler or Judge Smith -- or there's one more.

20 MR. OGILVIE: It's the unknown judge right
21 now.

22 THE COURT: Yeah, if they had made -- they had
23 granted -- they had denied the petition for judicial
24 review and I was stuck with the inverse condemnation
25 case in my department, it would proceed on the merits.

1 I couldn't care less what the other judges did as far
2 as their findings are concerned.

3 And I think that's the difference. It just so
4 happens to be here. And I understand that.

5 MR. OGILVIE: Judge, I got to tell you, I'm
6 completely lost that you are saying that you think you
7 can reverse the findings, the fact-finding --

8 THE COURT: I'm not reversing --

9 MR. OGILVIE: No.

10 THE COURT: No.

11 MR. OGILVIE: That's what you're saying --

12 THE COURT REPORTER: I need one at a time.

13 THE COURT: Wait.

14 Mr. Ogilvie, you know what you should say, if
15 you're going to say that, say it right.

16 You say, Judge, you know what, you have a much
17 different standard of review in a petition for judicial
18 review. And you made a determination that there was
19 substantial evidence in the record to support the
20 findings of the Las Vegas City Council. Period.

21 And that's all I made.

22 Now, I have it right here. I can nunc pro
23 tunc change everything. I don't mind saying that.

24 And what you're trying to do is you're saying,
25 Look, Judge, we're going to use that -- that findings

1 by the -- that you made in this case vis-à-vis a very
2 narrow focus as a sword. I don't think that -- I don't
3 think I can do that. I don't mind telling everybody
4 that. It's a different issue.

5 So I just happen to be here. Do I stand by
6 denying the petition? I'm not going to change that. I
7 can tell you that. But that's a different animal.
8 Now, everyone might disagree with me. That's okay.
9 But it's a different animal. It just is. I have a
10 different charge.

11 Now we got a full-blown civil litigation case
12 in front of me where there's no answer.

13 MR. OGILVIE: Your Honor, I apologize for
14 becoming frustrated --

15 THE COURT: Yeah, that's okay.

16 MR. OGILVIE: -- and --

17 THE COURT: That won't -- that doesn't bother
18 me at all.

19 MR. OGILVIE: I -- what I'm apparently not
20 articulating well is the Court -- and, yes, the Court
21 can issue an order nunc pro tunc and change some of its
22 specific findings. Absolutely.

23 The Court, if it feels that somehow some of
24 its findings were right -- were wrong, the Court has
25 that authority. But unless the Court -- what I'm

1 stating is unless the Court reverses specific findings,
2 and it's not just a finding that there was substantial
3 evidence before the City council to deny the
4 applications. There are specific findings. There's
5 probably 60 paragraphs of specific findings -- factual
6 findings that if, unless the Court issues an order nunc
7 pro tunc like it did on paragraph 60 -- I think 63
8 through 66, those factual findings, no matter that the
9 claims are different, those factual findings are
10 binding on everybody in this courtroom.

11 That's what I'm stating. And the Court
12 specifically found that --

13 THE COURT: But here's my question. I've
14 never seen that. So you're telling me that the
15 findings of the trial court regarding the worker's
16 compensation appeal potentially denying coverage as it
17 relates to -- or denying the claim as it relates to
18 injury causation, great example, would be binding in
19 a -- in this department or any department as it relates
20 to a jury making a determination as to whether that
21 individual suffered personal injury?

22 MR. OGILVIE: If this Court made a specific
23 finding in that proceeding, yes.

24 THE COURT: Okay.

25 MR. OGILVIE: And I go back to, and I know the

1 Court distinguished it the first time I said it. But I
2 go back to summary judgment. If this Court issued
3 summary judgment -- partial summary judgment on some
4 findings, the jury is bound by that. In fact, it
5 becomes --

6 THE COURT: But isn't that different?

7 MR. OGILVIE: No. It's not different at all.
8 The --

9 THE COURT: I've never seen a work comp appeal
10 decision entered into trial. And I did tort law for a
11 long time; probably filed a thousand lawsuits. A lot
12 of clients had work comp claims. Some were denied.
13 Didn't have preclusive effect on putting that case in
14 front of a jury.

15 MR. OGILVIE: Not putting it in front of the
16 jury, but some of the findings that the jury could
17 consider are bound by partial summary judgment.

18 THE COURT: Okay. I understand. You made a
19 good record.

20 MR. OGILVIE: And, again, the -- and I
21 understand the Court's position.

22 THE COURT: I don't have a position.

23 MR. OGILVIE: I'm -- I apologize. I
24 understand what the Court said in response the first
25 time that I mentioned Judge Mahan.

1 THE COURT: Yes.

2 MR. OGILVIE: But I want to reiterate that in
3 front of Judge Mahan, he stated that the plaintiffs
4 were making a claim for procedural due process. And
5 the defendants before him argued that the Court should
6 dismiss the plaintiff's procedural due process claim
7 because the plaintiff's alleged right to develop the
8 Badlands property is not a constitutionally protected
9 interest.

10 That is the exact same issue that is before
11 the Court in this component of my argument right now,
12 whether or not the plaintiff here has an
13 constitutionally protected property interest, whether
14 or not it had a vested right to redevelop the Badlands
15 golf course.

16 The defendants in that action argued that the
17 plaintiff did not have a constitutionally protected
18 property interest to redevelop the Badlands property.
19 And the Court stated the Court agrees. And then the
20 Court proceeded to go through the same analysis like
21 this Court went through in the petition for judicial
22 relief and stated that a government benefit, such as a
23 license or permit, may give rise to a protect --
24 protectable property interest where the recipient has a
25 legitimate claim of entitlement to it. And that's

1 where I come -- came up with the word entitled.

2 A legitimate claim of entitlement, citing the
3 Ninth Circuit case of Gerhart versus Lake County,
4 Montana. Judge Mahan continued on to say:

5 "A legitimate claim of entitlement can
6 exist where state law significantly limits the
7 decision-maker's discretion or where the
8 decision-maker's policies and practices create
9 a de facto property interest."

10 The Court then cited various provisions of the
11 Las Vegas Unified Development Code and NRS 278.349 in
12 support of the claim that the state law significantly
13 limited -- this was the developer stating that the
14 state law significantly limited the City council's
15 discretion.

16 And Judge Mahan found that while these law --
17 those laws impose procedural constraints on the City
18 council in considering various land development
19 applications, they did not amount to significant
20 substantive restriction on the City council's
21 decision-making.

22 And based on that determination, found that,
23 in fact, the plaintiffs here on this very same issue
24 did not have a legitimate claim of entitlement, which
25 means that they did not have a constitutionally

1 protected property interest to redevelop the Badlands
2 property.

3 Going back to this Court's findings of fact
4 and conclusions of law. The Court stated in the minute
5 order that it issued on October 11th, 2018, that
6 stated -- and I quote:

7 "Further, the issue raised by the
8 intervenor, which once again challenges whether
9 any intent to develop part of the Badlands
10 property without first applying for and
11 addressing a major modification to the master
12 plan, is identical to the issues litigated
13 before Judge Crockett.

14 "Lastly, that issue was fully adjudicated.
15 The Court hereby determines that the doctrine
16 of issue preclusion applies to the instant
17 matter. The doctrine of issue preclusion
18 controls and it would be improper after a
19 determination of substantial identity between
20 180 Land LLC, 70 Acres, LLC to permit the
21 petitioner to circumvent the decision of
22 Judge Crockett on issues that were fully
23 adjudicated."

24 And I want to go back to what the issue was.
25 Whether or not the developer could develop the

1 Badlands' properties without first applying for and
2 addressing a major modification to the master plan.
3 That was this Court's finding. That, in fact,
4 Judge Crockett's ruling had preclusive effect and, in
5 fact, the developer here must submit and obtain a major
6 -- an application -- must submit a major -- an
7 application for major modification, and obtain an
8 approval of that application for a major modification
9 to the master plan before the City can consider the
10 land-use applications that it denied that found -- that
11 formed the basis for these inverse condemnation claims.

12 So, yes, while the standard proof is
13 different, while the relief sought is different, the
14 underpinnings are very much the same. Whether or not
15 the decision by Judge Crockett that the developer must
16 obtain a major modification to the master plan before
17 it can have its four applications approved.

18 There's no difference. Whether it's PJR or
19 inverse condemnation, that is a factual finding that
20 everyone in this courtroom is bound by.

21 And for that reason, because -- and let me
22 state this. Because it goes to the issue of prejudice
23 or harm. There is nothing that prevented the plaintiff
24 here today to submit an application for a major
25 modification today. There's nothing that prevented the

1 developer here from submitting a major modification --
2 an application for a major modification yesterday, or
3 the 300-plus yesterdays prior to today. There's
4 nothing.

5 The only reason that the developer has not
6 submitted an application for a major modification is
7 because that undermines the developer's litigation
8 strategy. And I submit to the Court that that is not
9 justification for finding that somehow there is
10 prejudice or harm to the developer.

11 And, therefore, the Court should affirm its
12 prior finding that Judge Crockett's determination has
13 preclusive effect. And unless and until the developer
14 in this case submits a -- an application for a major
15 modification, and unless and until that application is
16 granted, the inverse condemnation claims here are not
17 ripe and must be dismissed for separate and independent
18 reason.

19 Therefore, your Honor, because there cannot be
20 a taking in the absence of a vested right, because the
21 developer is barred by the actions of its predecessor,
22 and because the preclusive effect of Judge Crockett's
23 order, the Court must grant the motion for judgment on
24 the pleadings and dismiss the inverse condemnation
25 claims.

1 If the Court has any further questions, I'd be
2 happy to answer them at this time.

3 THE COURT: Not at this time, sir. Thank you.

4 MR. OGILVIE: Thank you.

5 Oh, Ms. Leonard handed me a note that I made a
6 misstatement.

7 THE COURT: All right.

8 MR. OGILVIE: The City actually did file an
9 answer to the First Amended Complaint a year ago.

10 THE COURT: Okay.

11 MR. OGILVIE: And that's the reason that we're
12 here on a 12(c) motion rather than a 12(b)(5) motion.

13 THE COURT: That makes perfect sense. Thank
14 you, sir.

15 MR. LEAVITT: Your Honor, would you like me to
16 proceed?

17 THE COURT: Sir.

18 Well, what's -- Peggy, how are you doing?

19 THE COURT REPORTER: Let's take a break.

20 MR. LEAVITT: Five minutes?

21 THE COURT: We'll take a few minutes.

22 Peggy -- I always make sure my court reporter is well
23 taken care of because we appreciate her. We really do.

24 MR. LEAVITT: Thank you, your Honor.

25 THE COURT: And when she's ready, we'll get

1 started. We'll take a few minutes.

2 MR. LEAVITT: Okay.

3 (At 2:46 PM, break taken.)

4 THE COURT: We can go back on the record.

5 All right. Sir.

6 MR. LEAVITT: Your Honor, may I proceed?

7 THE COURT: Yes, you may.

8 MR. LEAVITT: Your Honor, we've argued ad
9 nauseam in this proceeding that the land-use law that
10 the City used in the petition for judicial review
11 proceeding should not be applied in this eminent domain
12 case. And we heard exactly why that's the case.

13 What the City did is they stood up to you and
14 they cited to your order, and they cited to some law,
15 they cited to the Stratosphere case where the City has,
16 discretion -- and here's where their discretion is, and
17 they gloss over it. The City has discretion to deny a
18 land-use application.

19 What the City does not have discretion to do
20 is to take property and not pay for it. So if, in
21 denying a land-use application, the City takes
22 property, it has to pay for it. And discretion is not
23 an immunity to that. And I'll give you some examples.
24 The government argued exactly --

25 THE COURT: I understand.

1 MR. LEAVITT: You got that? Okay.

2 I'll give you one example, your Honor.

3 THE COURT: You can make your record, sir.

4 MR. LEAVITT: Okay. For 14 years we argued
5 the air space taking cases.

6 (Clarification by the court reporter.

7 THE COURT: Like Sisolak?

8 MR. LEAVITT: Sisolak. And the other --
9 there's two published decisions. The Sisolak case and
10 the Hsu case. And in both of those cases, the
11 government made the exact same argument that the City's
12 making here to you today, is that the landowner's
13 property was vacant, they didn't have entitlements, and
14 the government was entitled to deny the use -- or to
15 deny the applications on their property and, therefore,
16 when the government imposed a height restriction on
17 that property, there was no taking. Or stated another
18 way, the government had discretion to impose the height
19 restriction on the property and therefore there
20 couldn't be a taking. And the Nevada Supreme Court in
21 Sisolak case Footnote 25, unequivocally stated that the
22 government may have discretion to apply valid zoning
23 laws that don't amount to a taking.

24 So if they apply those valid zoning laws, and
25 in applying those valid zoning laws and applying their

1 discretion it amounts to a taking, then they have to
2 pay just compensation. But that's a perfect example of
3 why we can't use PJR or land-use law in this eminent
4 domain case. And, your Honor, I was going to talk
5 about that later in my presentation.

6 But it was so -- I mean, the present --
7 Mr. Ogilvie's entire presentation was that the City of
8 Las Vegas has discretion and, therefore, they can take
9 property without paying for it. That was his whole
10 argument.

11 Well, anyway, your Honor, so let me go back
12 to -- let me go back to the other argument that was
13 made by the City is that they have the right to bring
14 this judgment or this motion for judgment on the
15 pleadings, and we don't have a right to bring our
16 motion for summary judgment, and you can only look at
17 the four squares of the pleadings in this case, and you
18 have to make a decision based upon that.

19 First of all, we filed a complaint. And as
20 you'll recall, Judge, in that original complaint, there
21 was a petition for judicial review and there was an
22 inverse condemnation claim.

23 THE COURT: Right.

24 MR. LEAVITT: In that very first one. And the
25 City came to you, and it was the City who said, Judge,

1 they have to be entirely separate. And remember what
2 the City's original request was. The City said,
3 Mr. Leavitt, you need to go refile this in an entirely
4 new department.

5 So they said these are two entirely separate
6 cases. We don't have the same standard that applies to
7 both of them.

8 THE COURT: They're not the same standard.

9 MR. LEAVITT: They're not. And they -- that
10 was the City's argument, though, your Honor. Back
11 in -- about a year ago when they filed their first
12 motion to dismiss this case.

13 And so what I said is, I said, Judge, listen
14 we don't want to have to start over. Can we just sever
15 them?

16 And you came up with a great idea. And you
17 will remember I said, Judge, that's a great idea.
18 Rule 42. Let's just sever these two claims. They will
19 be entirely separate cases, but we'll have them in the
20 same courtroom. And that's exactly what we did. So we
21 weren't required to go file a totally separate lawsuit.

22 So that -- so, your Honor, so we have two
23 separate cases with two separate standards, and we
24 filed our new complaint in eminent domain and the City
25 filed an answer. And there's been more than 20 days

1 that have passed since that answer, which means we can
2 bring our motion for summary judgment or our motion for
3 a determination of liability on the taking.

4 So that's where we're at. And the City
5 doesn't get to say, Hey, Judge, Mr. Leavitt and the
6 landowners here, they're not entitled to bring a motion
7 for summary judgment. They're not entitled to present
8 the facts to you here today, that you just have to
9 decide this issue based upon the four corners of the
10 complaint and the answer.

11 That's not what the City's entitled to do.
12 We're entitled to bring our claim before you. We're
13 entitled to argue our claim before you, and we're
14 entitled to have this case heard on the merits. And
15 the Nevada Supreme Court has said that's the best way
16 to do it, is to actually decide cases on the merits.

17 And so, your Honor, that's what I want to do
18 right now, is I want to talk about our motion, our
19 motion for judicial determination of a taking. I want
20 to go through that motion, and as I go through that
21 motion and I go through the taking facts, you're going
22 to see why the City's motion to dismiss should be
23 denied, and I'm going to address each of these issues
24 at the end. I'm going to address the City's issue of a
25 ripeness, the City's issue of statute of limitations,

1 and the City's issue that it has discretion to deny
2 every application in the City of Las Vegas, and nobody
3 essentially has property rights anymore in the City of
4 Las Vegas. I'm going to address every single one of
5 these issues.

6 Can we start that?

7 And, your Honor, is it okay if I move up here?

8 THE COURT: Sir, you can control the well.

9 MR. LEAVITT: Okay.

10 MR. OGILVIE: Pardon me.

11 THE COURT: You need to see that?

12 MR. OGILVIE: I do want to see it.

13 THE COURT: Are we -- are we set up where you
14 can put that on there?

15 MR. LEAVITT: Um-hum.

16 THE COURT: You got it there, Mr. Ogilvie? I
17 just want to make sure you can see it.

18 My regular marshal isn't here. He's really
19 good at this stuff. Are you okay?

20 MR. OGILVIE: It's here now.

21 In addition to that, your Honor, again, I want
22 to raise the City's objection to external peripheral
23 factual contentions that are being --

24 THE COURT: I got it.

25 MR. OGILVIE: Thank you.

1 THE COURT: I do. You can have a standing
2 objection on that, sir.

3 MR. OGILVIE: Thank you.

4 MR. LEAVITT: So, your Honor, as I stated,
5 we're going -- we're going -- I want to address four
6 issues with you. The first one is: Has the
7 landowner's property been taken? All right. I'm going
8 to lay out the facts, and I'm going to lay out the
9 standards. Do we have a property interest? Are the
10 landowner's inverse condemnation claims right? Or
11 should they be time barred?

12 All right. Issue Number 1, that's the first
13 one we're going to go through, is has the property been
14 taken. Your Honor, this was the original question you
15 had earlier in the week, because what's the procedure
16 to determine a taking in these types of cases. And I'm
17 not going to go through this. I mean, it looks like
18 you've already gone through it. You've read the
19 McCarran International Airport versus Sisolak case, and
20 the State v --

21 THE COURT REPORTER: I need you to slow
22 down --

23 MR. LEAVITT: Okay.

24 THE COURT REPORTER: -- just a little.

25 MR. LEAVITT: I'm sorry.

1 THE COURT: Well, I think -- and it's my
2 recollection, I remember reading the Sisolak case, and
3 there was a counter motion. I think that was done on a
4 summary judgment basis.

5 MR. LEAVITT: Yes, it was.

6 THE COURT: Yeah.

7 MR. LEAVITT: But here's how the Court defined
8 that summary judgment, is that the judge is required to
9 look at the facts and then make a legal determination
10 based upon those facts of whether those facts rise to
11 the level of a taking.

12 And -- and here's the test right here, Judge,
13 and it's not an easy test. I mean, there's a nearly
14 infinite variety of ways in which a taking can happen.
15 There's no magic formula. I mean, it's essentially an
16 ad hoc inquiry where we look at the complex facts.
17 That is why initially these cases don't lend themselves
18 to a motion to dismiss. Because you have to look at
19 the facts and make a determination of whether there's
20 been a taking or not.

21 So here's how -- here's how I think is the
22 best way to do this. And, Judge, we've done this in
23 front of Judge Bare. We have one of these cases where
24 we're in the district court here. And we argued this
25 very exact issue for about 12 hours in front of one

1 judge here in the Eighth Judicial District Court.

2 And what we did there is we reviewed and
3 consider the City's action. It was at about the same
4 posture of this case, and then we compared those city
5 actions to other cases where a Court found that there
6 was a taking.

7 So if, in those other cases, we have similar
8 facts and the Court found that there was a taking under
9 those similar facts, then this Court should also find a
10 taking.

11 THE COURT: Now, here's my question.

12 MR. LEAVITT: Sure.

13 THE COURT: And it's -- and this is my real
14 concern.

15 MR. LEAVITT: Um-hum.

16 THE COURT: Because one of the things I don't
17 want to do is jump the gun.

18 MR. LEAVITT: Right.

19 THE COURT: I just don't.

20 MR. LEAVITT: I agree.

21 THE COURT: Here we have a scenario where
22 there's been -- it's my understanding, an amended
23 complaint.

24 MR. LEAVITT: Correct.

25 THE COURT: And an answer filed, right?

1 MR. LEAVITT: Yes.

2 THE COURT: Is that the current posture of the
3 case?

4 MR. LEAVITT: That's correct.

5 THE COURT: We have -- and they're raising
6 that as an issue, meaning it's too premature and those
7 types of things. But my question is this:
8 Procedurally, before we dive into the next swimming
9 pool potentially regarding inverse condemnation and the
10 like, shouldn't the case be along a little bit further
11 procedurally?

12 MR. LEAVITT: Your Honor, and that's --

13 THE COURT: Because I kind of asked that
14 question, I think, right, for a moment or two at the
15 last hearing.

16 MR. LEAVITT: I agree. It's a valid concern,
17 Judge. Are we going to enter a summary judgment-type
18 ruling at this point in time when we haven't engaged in
19 discovery? It's a valid question.

20 And here's -- and this is why I pointed this
21 out. You have two potential decisions. You can say,
22 Yes, I think the facts at this time meet the elements
23 of a taking. At this early stage of the proceedings.

24 Okay. In other words, if we've presented to
25 you the facts which show that there's been a taking,

1 these facts are known and these facts are undisputed
2 and they establish a taking, then you should enter a
3 determination of liability for a taking, and the sole
4 issue is just compensation.

5 If the answer is no, then you're right. If
6 you say to me, Mr. Leavitt, you haven't convinced me
7 today, you haven't shown me enough facts, then what
8 would happen is this case would proceed through
9 discovery. At the end of discovery, we would bring the
10 same motion and then we would ask you to make a finding
11 at that point in time of liability.

12 But the important point to note here is that
13 the Nevada Supreme Court has made it very clear that
14 this issue of whether a taking happened is based
15 upon -- based upon two things. Number one, you look at
16 the facts. And number two, you compare those facts to
17 the law.

18 And we believe that at this point in time, we
19 have the known facts. These facts aren't in dispute at
20 this point in time -- or at this juncture of the
21 litigation. These are facts that are based upon the
22 City's actions. They have the City's -- they're the
23 City's minutes. It's the City's transcript. These are
24 documents from the City itself demonstrating what it
25 did.

1 And at this point in time in the litigation,
2 your Honor, the City had not disputed that these facts
3 happened. And the reason they haven't disputed it is
4 because they can't. Because it's based upon, again,
5 the record before the City.

6 And as you stated before, your Honor, we have
7 11 City actions that I'm going to go through here. And
8 I'm not going to spend a half hour on each one of them,
9 but the first three I'm going to spend a little bit of
10 time on. So if you see me spend a little bit of time
11 on the first three, it doesn't mean I'm going to spend
12 the same amount of time on the last eight and we are
13 going to be here until midnight. So I am just going to
14 talk about these first three in detail.

15 And, Judge, you hit it right on the head. You
16 have to consider all of the City's actions in the
17 aggregate. It's similar to the cumulative error rule
18 on appeal. And, in fact, one of the cases that we
19 cite, it's that -- one of the cases we cite says,
20 Listen, they actually use the word. You have to look
21 at the cumulative facts in order to determine whether a
22 taking happens. So let's look at City Action No. 1.

23 Okay. And as I go through these, Judge,
24 you're also going to see where the City's claimed that
25 we don't have a property interest. The City's claimed

1 that our -- our inverse condemnation claims are not
2 ripe. And in the City's statute of limitations claim
3 you'll see where they're irrelevant and have been
4 rejected.

5 So here's City's Action No. 1. They deny our
6 35-acre application. As you recall, we brought an
7 application to develop this 35-acre right here on our
8 map here as a stand-alone piece of property. We said
9 to the City, We own this 35-acre property. It's a
10 separate parcel. It has separate legal owners. We
11 want to develop that property as a stand-alone piece.

12 We went to the City staff and we said, What do
13 we need to do -- or what do we need to submit to you to
14 do that?

15 And the City planning staff --

16 THE COURT: And I don't mind --

17 MR. LEAVITT: Okay.

18 THE COURT: This is -- I'm sitting here and
19 I'm thinking and I'm listening.

20 MR. LEAVITT: Um-hum.

21 THE COURT: But I can't recall ever granting
22 or denying a motion for summary judgment before there
23 was a 16.1 early case conference, right? And so I'm
24 sitting here, and I'm -- I don't mind telling you this:
25 I'm a little concerned.

1 Not necessarily about -- because, I mean, I
2 think Mr. Ogilvie has been a gentleman in this regard.
3 He hasn't said whether they contest the facts or not,
4 but I kind of think they might, right?

5 And the reason -- and he's nodding his head.

6 And I'm sitting here saying to myself, One of
7 the -- I mean, after -- I mean, I can live with my
8 decision, but I don't want to make a quote "obvious
9 error."

10 MR. LEAVITT: I got it.

11 THE COURT: You see what I mean?

12 MR. LEAVITT: I got it.

13 THE COURT: I just don't want -- I don't want
14 to make what potentially could be considered an issue.
15 And so I'm just wondering: Is it more prudent for me
16 as a trial judge to handle the case this way. I
17 understand your client might be frustrated because this
18 matter has been in litigation for a while.

19 MR. LEAVITT: Right.

20 THE COURT: I get that, right?

21 MR. LEAVITT: Um-hum.

22 THE COURT: But just as important, too, I
23 would be more -- if I was a client I'd be more
24 frustrated that the case went up on appeal and had to
25 come back, and we had to redo certain things regarding

1 the case procedurally. Because that can save -- I
2 mean, that could waste a lot of time versus,
3 ultimately, if there is an appeal, it's on firm ground.

4 MR. LEAVITT: Right.

5 THE COURT: You see where I'm going with that?
6 I mean, it's -- because I just sit back and I just
7 think about where we're at in the proceedings, right?

8 MR. LEAVITT: Um-hum.

9 THE COURT: I mean, it's -- and I know you got
10 a wonderful PowerPoint done.

11 MR. LEAVITT: Right.

12 THE COURT: There's a lot of factual issues.
13 I see where the factual issues are potentially very --
14 I understand your position regarding the opposition to
15 the motion to dismiss, and we can talk about that. But
16 from a practical perspective, utilizing prudence and
17 approaching the case in a way where we just want to
18 make sure we get it right.

19 MR. LEAVITT: Um-hum.

20 THE COURT: Aren't I better off pushing that
21 down the road a little bit after the 16.1 and so on?
22 Because at that point potentially somewhere down the
23 road, any and all appellate issues regarding the
24 procedural posture of the case are off the table.

25 MR. LEAVITT: Your Honor, I understand the

1 issue. And I understand the concern.

2 THE COURT: I do have a lot of concern on
3 that.

4 MR. LEAVITT: I got it.

5 THE COURT: I do. I don't mind saying that.

6 MR. LEAVITT: And I anticipated that issue,
7 your Honor. As I went through all these facts and as I
8 went -- as I prepared here, as I put this PowerPoint
9 together, your Honor. Here's the concern that we have:
10 Our client purchased this property in 2015.

11 THE COURT: I understand that.

12 MR. LEAVITT: Early. We're at 2019.

13 THE COURT: Yes.

14 MR. LEAVITT: And as Mr. Ogilvie stated, there
15 hasn't been a shovel of dirt turned out there.

16 THE COURT: Right.

17 MR. LEAVITT: So they're going -- if we don't
18 get this issue resolved pretty quickly, they're going
19 to be delayed another year. They're going to be
20 delayed another couple years. Your Honor, we want this
21 issue presented to you. We want it decided.

22 Now, if, after looking at these facts, you
23 say, Hey, Mr. Leavitt you haven't convinced me, I
24 totally understand that.

25 THE COURT: But see, here's the thing. I

1 don't want to say you have or have not convinced me --

2 MR. LEAVITT: Right.

3 THE COURT: -- when I'm concerned. I mean, I
4 want to sit back and really reflect, and if I'm going
5 to pull the trigger, I want to pull the trigger with
6 confidence.

7 MR. LEAVITT: I agree.

8 THE COURT: Or not, right?

9 But I want to make sure the case is in a
10 position where all the i's are dotted and t's are
11 crossed, that procedurally there's no issue. There's
12 been a 16.1. There's been an exchange of documents.

13 MR. LEAVITT: Uh-huh.

14 THE COURT: Under 16.1 there's a mechanism to
15 object to the document's authenticity. And there's a
16 whole myriad of things that are available to all the
17 parties, right? And so -- and understand this. This
18 case is in business court, right?

19 MR. LEAVITT: No, your Honor.

20 THE COURT: Okay. Well, I won't be involved
21 in the 16.1 then.

22 MR. OGILVIE: Unless the parties stipulate.

23 THE COURT: Unless the parties stipulate,
24 right?

25 MR. OGILVIE: We would stipulate.

1 THE COURT: Yeah. But you see where I'm
2 going? One of the beauties of business court is this:
3 We can push it a little quicker, you know. I mean, we
4 could have the 16.1, hypothetically, depending on where
5 the case goes, within a reasonable period of time.
6 Because, Mr. Leavitt, I'm really concerned about that.
7 I really and truly am. And it has nothing to do with
8 the merits or lack thereof of your client's position.

9 MR. LEAVITT: Um-hum.

10 THE COURT: Zero. But intuitively I don't
11 mind saying this, that if I considered and potentially
12 granted the relief you ask for today, I would be really
13 concerned --

14 MR. LEAVITT: Okay.

15 THE COURT: -- about the potential outcome
16 from an appellate perspective. I don't mind saying
17 that.

18 And -- because whether I am right or wrong, I
19 give it my best efforts, but I don't want to really
20 deal with what potentially could be concerned obvious
21 error.

22 MR. LEAVITT: I understand. Sounds to me --
23 your Honor, sounds to me like your Honor is going to
24 deny the City's motion for judgment on the pleadings.

25 THE COURT: Well, we haven't talked about that

1 yet.

2 MR. LEAVITT: Well, I know. But my concern
3 is -- on that issue is a lot of these facts --

4 THE COURT: And they said -- they said they'd
5 stipulate to business court. We can set a 16.1 out in
6 two or three weeks, get that done. I mean, we do those
7 in court; right? We can sit and talk about it a little
8 bit. We can issue a scheduling order, and get
9 things -- we can set a trial date.

10 And to be candid with you, I don't know what
11 type of discovery would be necessary in this case.
12 Maybe some would. I don't know if it would come down
13 to issues regarding requests for admissions. But, see,
14 here's -- this is what I think often is overlooked. I
15 don't mind telling you this. When it comes to Rule 56
16 motions, I have to -- whatever decision I make has to
17 be based upon admissible evidence; right?

18 I don't think I have that yet. Not unless --
19 and I don't think the City is going to stipulate to
20 that this is all admissible evidence. I don't think
21 so.

22 MR. LEAVITT: Your Honor --

23 THE COURT: You see what I'm saying? Because
24 I -- you could be 100 percent right and Mr. Ogilvie
25 could be wrong; Mr. Ogilvie could be right and you

1 could be wrong. I mean, I don't mind making tough
2 calls. I really don't. But I don't want to make tough
3 calls when I know there's a great probability that it's
4 going to come back to me.

5 MR. LEAVITT: So, your Honor --

6 THE COURT: And we could waste a year.

7 MR. LEAVITT: I got it. And here's our
8 concern on this, is we feel like the City has delayed
9 and delayed and delayed this matter. And we think that
10 they have a purpose behind it. The obvious purpose
11 behind this is to try to run our client out of money,
12 so that's our big concern here.

13 THE COURT: I understand.

14 MR. LEAVITT: And we have documentation here
15 that we've submitted on the record. It's 17 volumes.
16 And the City had an opportunity to object to that in
17 its opposition. The way we've done these before is
18 very similar to this.

19 THE COURT: But hasn't it always been after
20 the answer, 16.1 and those --

21 MR. LEAVITT: No. No, your Honor. It's not
22 always like that. And the reason that -- for that, is,
23 again, your Honor, is because --

24 THE COURT: So the Court granted summary
25 judgment?

1 MR. LEAVITT: Absolutely. And here's why, is
2 because by the time we bring the complaint --

3 THE COURT: Is there an exception that I'm
4 missing or something?

5 MR. LEAVITT: No. At the time we bring the
6 complaint, your Honor, we know the City's actions.
7 That's why. There's nothing else to figure out.

8 All of these inverse condemnation cases are
9 based upon the government's known acts. We know that
10 because it's based upon the documents they've
11 submitted. It's based upon the action they've taken --
12 they've taken against the landowner. Unless the City
13 is going to argue it did not deny the 35-acre
14 application. Unless the City is going to deny that it
15 did not -- or the City is going to claim that it did
16 not deny the master development agreement, or that the
17 City did not adopt these bills that are part of this
18 whole -- this whole action or this aggregate of action
19 that the City has taken against the landowner. That's
20 why we --

21 THE COURT: See, what I don't want to do, I
22 don't want to say yes or no after listening to all
23 this --

24 MR. LEAVITT: Okay.

25 THE COURT: -- because I'm concerned about the

1 procedural posture of the case, and then come back and
2 then do it again. I mean, I don't think that's wise.

3 MR. LEAVITT: I understand, your Honor. So
4 what -- so what would you propose? I mean, and I'm not
5 trying to put this on you. Are you saying that we go
6 through a 16.1, we look at the documents, we exchange
7 those documents with the City of Las Vegas, and after
8 that we renew our motion for summary judgment at that
9 time?

10 THE COURT: Well -- and I can't -- here's the
11 thing. I can't tell you when is the appropriate time
12 to do it. Typically lawyers know that. I mean,
13 really; right?

14 MR. LEAVITT: I feel like today was, your
15 Honor.

16 THE COURT: But, I mean, I -- but when I look
17 back, and sometimes -- I did some med mal defense work
18 and I did plaintiff's work. And I would know when the
19 appropriate time, for example, in a medical malpractice
20 case to file a motion for summary judgment as it
21 relates to liability or damage limitations or
22 something, right, in a premises liability, auto,
23 products case, you kind of know. Sometimes you
24 don't -- you can't file one because there's issues of
25 material fact, and I get that.

1 But that's kind of up to you when you do it.

2 MR. LEAVITT: Right.

3 THE COURT: But all I can say is this: Based
4 upon Mr. Ogilvie's representations that if,
5 hypothetically, I deny the motion to dismiss, we could
6 get you in relatively quick if you stipulated to
7 business court and get things done procedurally.
8 And -- and because it's -- I have never dealt with an
9 issue like this at this stage without a 16.1 where I'm
10 granting affirmative relief for a plaintiff, right?

11 MR. LEAVITT: Your Honor, can I have just one
12 moment?

13 THE COURT: Oh, you can --

14 MR. LEAVITT: Because I got a long
15 presentation.

16 THE COURT: I understand.

17 MR. LEAVITT: There's 11 facts.

18 THE COURT: I'm going to give you -- I'm going
19 to give you more than a moment. Whatever time you
20 need. You want to talk.

21 MR. LEAVITT: So here's what I was going to
22 do, your Honor. I was going to go through the 11 facts
23 showing the taking, and then I was going to rebut each
24 of the government's actions here. If you feel more
25 comfortable with us going through the 16.1 and then

1 renewing that motion for summary judgment at that time,
2 then I'm not going to go through these 11 facts, but I
3 am going to rebut each one of the government's
4 arguments for the motion on the pleadings.

5 THE COURT: Absolutely.

6 MR. LEAVITT: Okay.

7 THE COURT: But you see where I'm going on
8 this?

9 MR. LEAVITT: I got it.

10 THE COURT: Because I am concerned. And I
11 don't want a decision to come down. I mean, whatever
12 decision I make is based upon the law. I have no
13 problem with the Supreme Court doing that. But I don't
14 want a decision that could stand for the proposition,
15 What is Judge Williams doing down there?

16 MR. LEAVITT: Understood, your Honor.

17 THE COURT: Right? I don't -- that's the one
18 I don't want.

19 MR. LEAVITT: Okay. Well, your Honor,
20 we're -- this is what -- could we have a moment, your
21 Honor?

22 THE COURT: I'm going to let you talk.

23 MR. LEAVITT: Okay.

24 THE COURT: You know, I'm -- I'll step down.
25 Let me know when you're ready.

1 MR. LEAVITT: All right.

2 (At 3:30 p.m., break taken.)

3 THE COURT: All right. We can continue on.

4 MR. LEAVITT: Thank you, your Honor.

5 Your Honor, we think it would be great idea to
6 have this case heard in a business court-type setting
7 where you govern or you preside over the 16.1. What
8 we'd like to do -- what I'd like to do, your Honor, is
9 I'd like to discuss two of the City's first actions.
10 Okay. And they're relevant to the opposition to the
11 City's motion for judgment on the pleadings.

12 THE COURT: Okay.

13 MR. LEAVITT: Okay. And then I won't go
14 through the other eight. Okay?

15 THE COURT: That's fine. Whatever you think I
16 is germane --

17 MR. LEAVITT: Okay.

18 THE COURT: -- in opposition to the 12(c)
19 motion --

20 MR. LEAVITT: Okay. That's what I'm going to
21 do.

22 THE COURT: -- is fine. You do what you have
23 to do.

24 MR. LEAVITT: Okay.

25 THE COURT: But, I mean, for the record,

1 Mr. Ogilvie objected to us even considering the motion,
2 I guess, for summary judgment. And to be candid with
3 you, I think he's right. And we have to make sure the
4 case is in the proper procedural posture. And let's go
5 through the process. And then whenever the time is
6 ripe and you feel very comfortable, you do what you
7 have to do.

8 MR. LEAVITT: Okay. And, your Honor, we'd
9 like to have that 16.1 next week. We think that it's a
10 proper time frame. We have all of the City's
11 documentation. All the City has to do is confirm that
12 these are City documents. Most of them are
13 transcripts. They are agenda items. They just confirm
14 the City's actions, for example, of denying the master
15 plan development or denying the individual application
16 to develop the 35-acre property. So we'd like to do
17 that next week if possible, your Honor.

18 THE COURT: Well, all I can say is this.
19 First, let's hear argument --

20 MR. LEAVITT: Okay.

21 THE COURT: -- on the 12(c) motion. And then
22 once we do that, and if necessary, we can talk about
23 that.

24 MR. LEAVITT: Okay.

25 THE COURT: And that's kind of -- because I

1 don't want to be -- I don't want to move too quickly
2 and put the cart before the horse at this point.

3 MR. LEAVITT: Let me shorten this up
4 significantly, your Honor. What I'm going to do is I
5 am going to address these two first City actions, and
6 then I'm going to address each of the individual issues
7 that the City has raised to dismiss the landowners
8 complaint in this case.

9 And the reason I want to talk about, again,
10 these two first City actions is because they're
11 inextricably intertwined with the defense that we have
12 to the City's motion.

13 So City Action No. 1, your Honor, was the
14 denial of the 35-acre application.

15 Just very quickly, our landowner went to the
16 City of Las Vegas and said they wanted to develop this
17 individual property, the 35-acre property. And the
18 City planning staff told our client everything that he
19 needed to do, told the landowner everything he needed
20 to do to meet the City code requirements. And at the
21 end of the day, our -- the landowner prepared its own
22 application, submitted that application to the City of
23 Las Vegas, and the City planning staff stated that it's
24 consistent with all the zoning requirements, it's
25 consistent with the code, and it's consistent with the

1 Nevada Revised Statutes. The City of Las Vegas denied
2 that application.

3 Now, for purposes of our eminent domain case,
4 the City said the sole basis at the hearing for denying
5 that application was it wanted to see -- and this is
6 important right here on this map -- is the City wanted
7 to see the whole 250 acres developed as one unit. The
8 City said, We do not want piecemeal development on this
9 property.

10 Our client vehemently objected to that and
11 said, I have separate parcels with separate legal
12 owners. I'm entitled to develop these parcels
13 separately.

14 And the City of Las Vegas said, No, we're not
15 going to let you do that. You have to submit a master
16 development agreement for the entire property, and said
17 we're very, very close to getting that done.

18 Your Honor, I would submit to you that that
19 one act right there of denying this application which
20 met all of the code requirements establishes a taking
21 under the Del Monte Dunes case. And I wasn't going to
22 spend a lot of time on that, but I'm going to move
23 forward because this is relevant, again, to the
24 opposition to the City's motion here.

25 City Action No. 2 was the denial of the master

1 development agreement. So remember, your Honor, on the
2 35-acre individual application, the City of Las Vegas
3 stated to our client, The sole basis for which we're
4 denying your application is you need to do a master
5 development agreement. So our client went and did
6 that.

7 Our client worked with the City for
8 approximately two years on that master development
9 agreement. The City required our client to make more
10 concessions than any landowner ever to appear in front
11 of the City council. They sent our client -- or they
12 sent the landowner back to the drawing board
13 approximately 16 times, your Honor, to redo that master
14 development agreement.

15 And in the end, and I think this is an
16 important point, Judge, this master development
17 agreement right here that the City required our client
18 to go through was written by the City of Las Vegas.

19 So the City of Las Vegas said, You're not
20 going to be able to develop this individual parcel.
21 You have to develop it as one cohesive unit, and here's
22 the agreement that we drafted for you to do that.

23 And the City -- the City planning staff said,
24 This meets every single requirement that we can
25 possibly think of. We brought this to the City

1 council, the City's own development agreement, on how
2 the property should be developed. And the City struck
3 it.

4 So you think about that for a minute, your
5 Honor. The City struck its own development agreement
6 that the City drafted for the development of our
7 250-acre property.

8 The City didn't indicate a compromise. And
9 here's the part that's in opposition to what
10 Mr. Ogilvie just stated to you today: That master
11 development agreement included a major modification.

12 So the City of Las Vegas has told you
13 unequivocally that this claim is not ripe because we
14 did not submit a major modification to the City of
15 Las Vegas to develop our property. And that's one of
16 the reasons that the City is alleging that our claim
17 should be dismissed right now.

18 I want to show you this quote right here, your
19 Honor, because this is important to what the City
20 stated. This is a quote by Brad Jerbic at the City of
21 Las Vegas. He said:

22 "Let me make something for the record, just
23 to make sure we're absolutely accurate on
24 this."

25 This is Brad Jerbic now.

1 THE COURT: Yeah.

2 MR. LEAVITT: This isn't me and this isn't
3 private counsel over her. He said:

4 "I want to make sure everybody is
5 absolutely accurate. There was a request for a
6 major modification that accompanied the master
7 development agreement."

8 That was voted down by the council. So that
9 modification, that major mod, was also voted down.

10 THE COURT: Because I think that's in the
11 points and authorities, right?

12 MR. LEAVITT: That's in the points and
13 authorities, your Honor.

14 THE COURT: Yes. I remember reading that.

15 MR. LEAVITT: Okay. So here's the point. And
16 this is why this is such a critical -- a critical part
17 of my argument right here. If Mr. Ogilvie stood up
18 here and said that our client -- that the landowner
19 here did not file a major modification and therefore
20 his claims are not ripe and therefore his claim should
21 be dismissed.

22 And we know now, your Honor, that the
23 landowner did, indeed, file a major modification to
24 develop the 35-acre property and the City struck it.

25 Struck -- and, your Honor, we've also laid out

1 in our pleadings there where that master development
2 agreement included every single procedure and standard
3 that was in a major modification.

4 In addition to submitting a major modification
5 as part of the master development agreement, we also
6 submitted what's called a general plan amendment. And
7 we just submitted the procedures and standards for
8 general plan amendment just last night to you, your
9 Honor, as Exhibit No. 109. And that general plan
10 amendment far exceeds any of the requirements for a
11 major modification.

12 And, your Honor, if you have any questions
13 about that general plan amendment, I can -- I can
14 address each one of those if you'd like.

15 So the comparative case here, your Honor, is,
16 again, the City of Monterey versus Del Monte Dunes
17 case. The City of Monterey versus Del Monte -- in that
18 case what happened is the landowner went to the City of
19 Monterey, and on five different occasions the City of
20 Monterey sent him back to the drawing board to redo his
21 development application. And finally he sued the City
22 of Monterey and said, Listen, you've denied me five of
23 my applications. You won't let me develop my property.
24 I am bringing a lawsuit in inverse condemnation.

25 That's the same type of action that the City

1 of Las Vegas has engaged in in this case, to deny our
2 client the use of their property.

3 And, your Honor, do you have any questions
4 about the denial of the master development agreement?

5 THE COURT: Because once again, that was in
6 the pleadings; right?

7 MR. LEAVITT: That's in the pleadings, your
8 Honor.

9 THE COURT: Yes.

10 MR. LEAVITT: But these are the important
11 parts for the judgment on the pleadings right here that
12 the government is trying to get you to grant is, number
13 one, we did a major modification as part of our
14 application; and, number two, we also did a general
15 plan amendment which far exceeds the requirements of a
16 major modification.

17 So this argument that the City is making to
18 you today that we didn't do a major modification is not
19 true. We filed that major modification with our master
20 development agreement.

21 All right, your Honor. So now I want to -- if
22 I can just take a minute, I got to fast forward through
23 a lot of this, and I'm going to get to the City's
24 issues now.

25 All right. Let's see here. Okay.

1 All right. Issue No. 2. So this, your Honor,
2 now goes directly to the City's argument of whether we
3 have a vested property right or not. The City argued
4 most of the time in part of its pleadings here that
5 our -- that our landowner here when he purchased the
6 property purchased it as a golf course, and he had no
7 vested right to use that property for anything other
8 than a golf course. And so here's their -- and their
9 argument is since they have discretion to deny our
10 land-use applications that we're stuck with a golf
11 course use, and, therefore, we have no right to use the
12 property for anything else.

13 And, your Honor, reason number one right here
14 is why we have a vested property right. Here's the
15 underlying number reason -- number one reason. Is the
16 McCarran International Airport versus Sisolak case. In
17 that case the landowner had vacant land without
18 entitlements. The county argued the same exact
19 argument that the City is making to you here today, is
20 that the landowner didn't have the vested right to use
21 his air space because the property had no entitlements
22 and the County has discretion to deny that land-use
23 application.

24 The Nevada Supreme Court flatly rejected that
25 argument and held that every single landowner in the

1 state of Nevada has a property right. Sufficient -- as
2 long as they own the property, they have a property
3 right sufficient to bring a taking claim. That same
4 exact argument was made in the State versus Swartz case
5 as I told you before, your Honor. And the Nevada
6 Supreme Court again rejected it in that case.

7 Your Honor, here's reason number two that we
8 have a vested right to bring our claim here is the
9 Judge Smith orders. Your Honor, we've talked about
10 back and forth about the Judge Smith orders, but we
11 think they're absolutely critical to this case.

12 THE COURT: And explain to me why --

13 MR. LEAVITT: Okay.

14 THE COURT: -- they would be critical to this
15 case.

16 MR. LEAVITT: Absolutely, your Honor.
17 Number one, the City --

18 THE COURT: Because wasn't that -- I forget,
19 you know, it's been a few days, but didn't that
20 specifically deal with CC&Rs --

21 MR. LEAVITT: Well, it --

22 THE COURT: -- as it related to the property?
23 And I'm trying to figure out how that's germane to this
24 case.

25 MR. LEAVITT: Well, it was a dispute. And I'm

1 going to go through that. It was a dispute between one
2 of the landowners who lived out in this area and our
3 client.

4 THE COURT: Right.

5 MR. LEAVITT: You're right. It was a dispute
6 between them two. But here's the important facts, is
7 number one, the City was a party. So the City had an
8 opportunity to be heard.

9 It was extensively briefed to the Court. And
10 the sole issue that was presented to Judge Smith was,
11 do the landowners have the vested right to develop the
12 250-acre property as a residential use? That was the
13 sole and pointed issue.

14 The issue that the City of Las Vegas just
15 argued to you here today that the landowners don't have
16 the vested right to develop this property, that pointed
17 issue was presented to Judge Smith. And here's what he
18 held. He said:

19 "Notwithstanding any alleged open-space
20 land-use designation on the property, the
21 zoning on the land is supported by the evidence
22 is RPD7."

23 So Judge Smith said, Listen, I don't care if
24 you have open space designation on the property, even
25 if you have it, we have an RPD7 hard residential zoned

1 property.

2 THE COURT: But, I mean, that's not at issue,
3 the zoning for the property in front of me; right?

4 That's not an issue.

5 MR. LEAVITT: Understood. But the question is
6 does the landowner have the vested right to use his
7 property.

8 THE COURT: That's a different issue.

9 MR. LEAVITT: Absolutely. And so what
10 Judge Smith said is, he said, Yes. And the reason they
11 have the vested right to use their property is because
12 it's hard zoned residential. Here's his second -- this
13 one is a critical holding here, Judge. He says:

14 "The zoning" --

15 THE COURT: It was hard zoned RPD7 --

16 MR. LEAVITT: Right.

17 THE COURT: -- since 2001.

18 MR. LEAVITT: Your Honor, since 1990.

19 THE COURT: Oh, 1986 I think was the first.

20 MR. LEAVITT: 1986, absolutely.

21 And Judge Smith recognized that.

22 And here's another critical finding that he
23 said:

24 "The zoning on the land dictates its use
25 and defendant's right to develop their land."

1 Your Honor, that's an important finding by
2 Judge Smith when we're talking about other judges and
3 other rulings that they've made. He said this property
4 right here is hard zoned RPD7, and that hard zoning
5 dictates how the property will be developed and how it
6 can be used.

7 He then said:

8 "Keeping the golf course for potential
9 future development as a residential use was an
10 intentional part of Mr. Peccole's plan."

11 We heard from counsel over here that the golf
12 course was the end-all/be-all of this property, that
13 the landowner could only use it for a golf course.
14 That's not what Judge Smith held. He addressed that
15 pointed issue again. Do the landowners have the vested
16 right to use their property for residential use, and he
17 say, yes, unequivocally.

18 And then he even said they have the right to
19 close the golf course and not water it.

20 Your Honor, there's not a separate zoning in
21 the Judge Smith case and a separate zoning in this
22 case. There's not a separate open space in the
23 Judge Smith case and an open space designation -- a
24 different open space designation in this case. He said
25 that that zoning grants our client, our landowner, the

1 right to develop his land.

2 In other words, that hard RPD7 zoning gives
3 our client, the landowner, the vested right to use that
4 property.

5 And now what the government is going to say,
6 they're going to stand up and they're going to say
7 that's just a dispute between two private people. I
8 already know it. The Nevada Supreme Court and
9 Judge Smith both --

10 THE COURT: It sounds like that in a way.

11 MR. LEAVITT: It is. And you know what? It
12 is, Judge. But the Nevada Supreme Court and
13 Judge Smith said they looked at the public maps and the
14 record. What public maps would they have looked at,
15 your Honor, to make this determination that this
16 property is hard zoned RPD7 which gives the landowner
17 the right to develop this property? The City maps.

18 So, your Honor, that's reason number two that
19 the landowners have the vested right to use their
20 property for residential use.

21 Okay. Reason number three we have the
22 right -- that our landowners has the vested right
23 sufficient to bring a taking in this case is the City's
24 past, current, and future designation on our -- on the
25 landowner's property here is residential.

1 As you just stated, your Honor, and I'm going
2 to go through these quickly, in 1986 the property was
3 zoned residential. It was zoned again residential in
4 1990. In 1996 the City provided a zoning confirmation
5 letter. In 2001, like you said, your Honor, the City
6 passed an ordinance specifically designating again the
7 hard residential zoning on the landowner's property.
8 In 2014 the landowner went to the City and said, What
9 is the use of this property? What is the zoning? And
10 the City again confirmed in a zoning confirmation
11 letter that the landowners have the right to use the
12 property for a residential use.

13 In 2016 Tom Perrigo, the head of planning,
14 confirmed that. And in 2018 Brad Jerbic again
15 confirmed it.

16 Now, your Honor, this is why I say -- if you
17 look here at my PowerPoint, I say, Listen, the past,
18 current, and future designation of this property is for
19 residential use. Here's why.

20 It's because this map right here is from the
21 City's 2020 master plan. And what does it designate
22 our client's property as? It's a zoning
23 identification, and it designates the landowner's
24 property in this case as a residential use.

25 And, your Honor, you saw that. I think you

1 saw this in the PJR hearing. Since the landowner's
2 property has been designated as a hard zoned
3 residential property from 1986 to the future in 2020,
4 the hierarchy in the City of Las Vegas in applying the
5 different kinds of plans and zoning says that that
6 zoning trumps everything else. The zoning is at the
7 pinnacle.

8 So, your Honor, that's the third reason that
9 our -- that the landowner in this case has the vested
10 right to use this property for a residential use is the
11 City of Las Vegas confirmed repeatedly that the hard
12 zoning on the property is RPD7.

13 Now, your Honor, reason number four that the
14 landowners have a vested right to use the property is
15 that the Peccole plan itself designates this specific
16 35-acre property as residential. So, your Honor, you
17 heard the City of Las Vegas state repeatedly that this
18 35-acre property here was an open space or golf course
19 property in the Peccole plan, and that's their number
20 one argument in this case. I'm going to show you right
21 now, your Honor, that this property is not an open
22 space or golf course property, even on Mr. Peccole's
23 plan.

24 Your Honor, you can see right here where the
25 35-acre property is located. It's right above the golf

1 course designation, your Honor. And that golf course
2 designation, if you look right here, your Honor, with
3 the yellow right here is where the -- where Mr. Peccole
4 identified the golf course on the landowner's property.

5 And, your Honor, right here, this section
6 right here, is the 35-acre property.

7 This is Mr. Peccole's own plan right here. So
8 the Peccole plan that the City of Las Vegas has asked
9 you to follow here puts our 35-acre property in the
10 residential zone. So from the very beginning of
11 Mr. Peccole's concept plan, your Honor, he identified
12 our property here on the maps as a residential use.

13 And, your Honor, if you have any questions
14 about this Peccole plan and the residential use, I can
15 answer that right now.

16 THE COURT: Now, what -- I have a question.
17 One issue was raised --

18 MR. LEAVITT: Um-hum.

19 THE COURT: -- from the moving papers and it
20 hasn't been addressed yet was regarding the statute of
21 limitations.

22 MR. LEAVITT: I'll get to that, your Honor.

23 THE COURT: Okay.

24 MR. LEAVITT: But as you see right here, even
25 if we accept the argument that the Peccole plan applies

1 here -- now we've said it doesn't. But even if you
2 accept the Peccole plan -- the argument that the
3 Peccole plan applies, the Peccole plan -- this is an
4 important point -- designates the landowner's property,
5 the -- the specific 35-acre property in this case as a
6 residential use. Therefore, there's no reason to even
7 file a major modification in this case. The City has
8 argued that this major modification has to be applied.
9 The landowner didn't seek in this 35-acre property case
10 to modify the Peccole plan.

11 All right, your Honor. This is the last
12 reason, and I'm going to get to that -- to your other
13 question. The last reason that the landowners have a
14 vested right, in other words to use their property as a
15 residential use, is even the Clark County Tax Assessor
16 did an analysis of this property and made the
17 determination that the property is a residential
18 property. And, therefore, is taxing the landowner
19 owner on an \$88 million basis.

20 All right. So here's the conclusion, your
21 Honor, on the vested property rights issue. The Nevada
22 Supreme Court has generally held that we have the
23 vested right. The Nevada Supreme Court has
24 specifically held that we have the vested right to
25 develop our property. The City agreed to the

1 residential hard zoning on the 35-acre property. And
2 the Peccole concept plan itself identifies a
3 residential land use on this specific 35-acre property.

4 That means, your Honor, we have an exhaustive
5 list here where we're talking about the right to
6 develop the property or this vested right. We have the
7 Supreme Court weighing in on the issue. We have the
8 City of Las Vegas identifying the zoning as a
9 residential use. And we have the Peccole concept plan
10 itself identifying the landowner's property as a
11 residential use.

12 There's no other document or opinion from the
13 City of Las Vegas or anybody else, even the Clark
14 County Tax Assessor, that this property is anything
15 other than a residential property.

16 Your Honor, you asked the questions about this
17 statute of limitations, and I'm going to go to that
18 right now. All right? This is whether the claims are
19 time barred.

20 All right. This is issue number four, and I'm
21 going to jump ahead to it. Here's the City's argument.
22 They say that in 1990, the City identified on its
23 master plan a PROS designation on our client -- on the
24 landowner's property that somebody wrote PROS over the
25 250 acres.

1 THE COURT: PROS, that means?

2 MR. LEAVITT: Parks, recreation, open space.

3 THE COURT: Yes.

4 MR. LEAVITT: Now, keep in mind, this is just
5 a planning document. And somebody at the City of
6 Las Vegas wrote that PROS on the 250-acre property.
7 And the City's attorney now asserts that that is a
8 taking of the property and started the statute of
9 limitations.

10 Your Honor, I've been on the other side of
11 that argument, and I've actually made that argument.
12 But guess what, Judge. I lost. The City of Las Vegas
13 has absolutely and unequivocally argued in the past
14 that the designation of a property on a master plan is
15 not a taking. The City of Las Vegas stated that
16 numerous times in the past, and the reason that the
17 City said that, your Honor, is because there's an -- if
18 the City was responsible for every single time that it
19 designated a property on a master plan, it would be
20 exposed to billions of dollars in damages.

21 In addition to do that, that very argument
22 that the city made about the statute of limitations
23 starting in 1990 was rejected by the Nevada Supreme
24 Court in both the Sproul Homes and the Ad America case.
25 In both of these cases, your Honor, the Nevada Supreme

1 Court stated unequivocally that coming over to a map
2 and writing PROS on it is not a taking of property.
3 And if it's not a taking of property, it cannot
4 commence the statute of limitations.

5 So this very argument that the City of
6 Las Vegas is making to you in regards to the statute of
7 limitations has been presented to the Nevada Supreme
8 Court twice; not once, your Honor, but twice and
9 rejected twice by the Nevada Supreme Court.

10 Here's what the statute of limitations is.
11 It's, number one, 15 years. It's the White Pine Lumber
12 case.

13 And, number two, the statute of limitations
14 doesn't start until the City tries to enforce the PROS
15 that it places on its master plan.

16 So here's what -- here's the way it works,
17 Judge, is the City planners can get together, and they
18 can put together a master plan, and they can designate
19 certain property uses on that master plan, and they're
20 not responsible for a taking. But once the City tries
21 to enforce that master plan against the landowner, then
22 the taking starts and then, and only then, are they
23 responsible for a taking.

24 So when did that happen in this case? That
25 did not happen until about 2014, 2015, or thereafter

1 when the City of Las Vegas began denying the use of
2 our -- of our landowner's property in this case based
3 upon this open space and -- and golf course or PROS
4 designation. So, therefore, your Honor, this statute
5 of limitations argument has no place in this case and
6 it's been rejected.

7 Now, once we did that in our opposition,
8 Judge, we laid this all out, in the reply the City came
9 with a second statute of limitations argument.

10 And the second statute of limitations argument
11 is this: The landowners use their property for a golf
12 course, and, therefore, they effectuated what I'm
13 assuming the City refers to a self-taking of their own
14 property. That's never been the law. There's no case
15 on that.

16 In other words, Judge, if people in the state
17 of Nevada have only used their property for a vacant
18 use for the past 15 years, then that property is stuck
19 at a vacant use.

20 That's the government's second argument on
21 this statute of limitations. Once you start using your
22 property for vacant use, you're stuck at that use. And
23 if it's been vacant for 15 years, the City of Las Vegas
24 can take your property without paying for it. That has
25 never been the law, Judge, and it never will be the

1 law.

2 Your Honor, do you have a question about that
3 statute of limitations issue?

4 THE COURT: No.

5 MR. LEAVITT: Okay. If there's any question
6 there, Judge, I want to address it, because it, again,
7 has been presented to the Nevada Supreme Court and
8 rejected.

9 Now, I want to talk specifically about the
10 Crockett order. And, your Honor, this is the
11 interchange that you had with Mr. Ogilvie. And I want
12 to show you specifically in this case why the Crockett
13 order cannot apply in this inverse condemnation case.

14 The Crockett order says that this 17-acre
15 property right here is within the open space
16 designation on Mr. Peccole's plan. It's within the
17 golf course designated area. And, therefore, the
18 landowner needed to do a major modification to modify
19 Mr. Peccole's plan from a golf course to residential
20 use if he wanted to use that property for a residential
21 use.

22 Okay. In other words, the 17-acre property
23 was going to be used for something contrary to
24 Mr. Peccole's plan and therefore the landowner had to
25 file a major modification. That argument does not

1 apply here in this case.

2 And the reason the Crockett order argument
3 doesn't apply here in this case is because this 35-acre
4 property right here, your Honor, was never in an open
5 space or golf course designation on Mr. Peccole's plan.

6 This 35-acre property right here has always
7 been designated for a residential use, even on
8 Mr. Peccole's plan. Therefore, if the landowner wanted
9 to develop that 35-acre property for a residential use,
10 it would be consistent with Mr. Peccole's plan. And if
11 it's consistent with Mr. Peccole's plan, then there's
12 no reason to file a major modification.

13 And, your Honor, so in conclusion, that's why
14 it's entirely improper to argue the 17-acre Crockett
15 order in this 35-acre case. It absolutely does not
16 apply.

17 I'll just point out one more time. The
18 17-acre property was in an open space or golf course
19 designation on Mr. Peccole's plan. The 35-acre
20 property case was not in an open space or golf course
21 designation on Mr. Peccole's plan, meaning there's
22 nothing to modify.

23 All right. And, your Honor, I just have a
24 couple additional reasons here. I mean, the 17-acre
25 Crockett order is contrary to the Judge Smith orders.

1 Obviously, we believe that the Judge Smith order should
2 apply over the Crockett order in this inverse
3 condemnation case.

4 And the Crockett order doesn't include all of
5 the facts of this case. Like you noted, your Honor,
6 the Crockett order was decided at a time before all of
7 these facts developed.

8 And here -- and, your Honor, I don't know.
9 Did you see this in our last filing right here where we
10 compared the petition for judicial review and the
11 eminent domain law? You can't see it. It's too small.

12 But we did a comparison and this shows --

13 THE COURT: I think I remember seeing this
14 somewhere.

15 MR. LEAVITT: Okay. We did a comparison to
16 show --

17 THE COURT: I understand there's a distinct
18 difference.

19 MR. LEAVITT: It's a distinct difference, your
20 Honor.

21 THE COURT: I think I made that clear in open
22 court.

23 MR. LEAVITT: And I understand -- okay, your
24 honor, then I'm not going to go through.

25 THE COURT: If you want to make a record --

1 MR. LEAVITT: Well, your Honor, it's all in
2 our pleadings so we've made the record, but I just want
3 to make sure that there's that -- so that I can point
4 out that additional reason for why the Crockett order
5 doesn't apply, it was in a petition for judicial review
6 where land-use law was applicable. It wasn't in an
7 eminent domain case where constitutionally based
8 eminent domain law applies.

9 And, your Honor, you discussed the Sturman
10 order, the Bixler order in your prior orders. If we're
11 going to apply any type of issue preclusion here, it
12 certainly shouldn't be for the Crockett orders. If
13 it's going -- if we're going to have issue preclusion,
14 it should be for the Sturman, Bixler, and your prior
15 order because all of those orders were entered in
16 inverse condemnation cases, not petition for judicial
17 review cases like the -- like the Crockett order.

18 So, your Honor, here's our request, and then
19 I'm done. All right.

20 Our request is to grant our motion to amend or
21 supplement the inverse condemnation complaint. We did
22 a countermotion where what we did, your Honor, is we
23 took our allegations that we put in our motion for
24 summary judgment and we put them into a complaint. And
25 we laid out all of our facts, all of the facts that

1 support our taking claim, all of the facts that rebut
2 the government's arguments here for why our claim
3 should be dismissed, and we put those within the four
4 corners of our complaint.

5 Now, Judge, do we think that was necessary?
6 Absolutely not. But I'm afraid that if we don't do
7 that, next week we're going to get a motion to strike
8 answer, which is just disguised as a fourth or fifth
9 attempt to dismiss the claims in this case. So we
10 respectfully request that you grant our motion to amend
11 and supplement the pleadings and allow that pleading to
12 be filed in this case.

13 And, secondly, that you deny the City's motion
14 to dismiss. There -- your Honor, if there's -- I've
15 laid this out in our pleadings in detail. We believe
16 that not only should the City's motion to dismiss be
17 denied, but we think the summary judgment is
18 appropriate for liability in this case, and we've laid
19 those facts out there.

20 And then, of course, our last request is to
21 grant our motion for judicial determination of the
22 taking.

23 Your Honor, do you have any questions for me
24 on any of these issues, on the statute of limitations,
25 on the ripeness issue, on whether we have a vested

1 property right or not?

2 THE COURT: The only comment is I'm not going
3 to grant the motion for judicial determination of a
4 taking.

5 MR. LEAVITT: We understand that. We're going
6 to go through 16.1.

7 THE COURT: I'm not going to grant that.

8 MR. LEAVITT: Okay.

9 THE COURT: I mean, I'll deal with the other
10 issues at the very end, but I just feel that
11 procedurally it would be a very difficult issue to
12 resolve at this time without formally conducting a
13 16.1, conducting a little discovery or whatever is
14 necessary. And that's up to you, you fine ladies and
15 gentlemen, to decide.

16 But I'm concerned about that one.

17 MR. LEAVITT: No, your Honor, and I totally
18 understand.

19 Let me point out one final thing, your Honor,
20 if I can get back through this PowerPoint. I just want
21 to point out one last thing because we're talking about
22 whether the City's motion to dismiss should be
23 denied -- or should be granted or not.

24 THE COURT: Yes.

25 MR. LEAVITT: Okay. As I stated at the

1 beginning, these cases don't lend themselves to a
2 dismissal. And here's why. The Nevada Supreme Court
3 and the United States Supreme Court have held
4 unequivocally that when you determine whether a taking
5 has occurred or not, you actually have to look at the
6 facts. You actually have to consider the complex
7 fact -- you have to do a complex factual assessment.
8 But there's no -- you -- there's no set formula.
9 There's no magic formula. There's an infinite variety
10 of ways in which a taking can occur.

11 And so the Nevada Supreme Court and the United
12 States Supreme Court has sent a message unequivocally
13 to all the trial court judges, the federal district
14 court judges, the state district court judges that you
15 don't dismiss these cases. You got to let them be
16 heard on the merits.

17 And we've sufficiently pled all of our claims,
18 your Honor. We sufficiently pled five different
19 inverse condemnation claims. We've laid out in our
20 pleadings how each and every one of those five
21 different inverse condemnation claims is supported --
22 well supported in Nevada and United States Supreme
23 Courts law. There's absolutely no basis or reason to
24 dismiss them at this time.

25 That is what I have, your Honor. Do you have

1 any other questions for me?

2 THE COURT: None at this time, sir.

3 MR. LEAVITT: All right. Thank you.

4 THE COURT: Mr. Ogilvie, sir. Thank you for
5 your patience.

6 MR. OGILVIE: Thank you, your Honor.

7 MS. LEONARD: Jim, can you turn off your
8 PowerPoint?

9 MR. LEAVITT: Oh, yeah.

10 MR. OGILVIE: The reason I started off the way
11 I did, objecting to factual contentions, was because of
12 what I heard. And even -- even with the contention
13 that -- or representation that this is going to just
14 address the City's motion for judgment on the
15 pleadings, still it was chock-full of facts. And one
16 of the reasons that -- one of the many reasons that the
17 summary judgment is inappropriate, and I won't belabor
18 the point --

19 THE COURT: You don't --

20 MR. OGILVIE: I understand where you are
21 going, your Honor. I'm not going to --

22 THE COURT: I am not going to invite instant
23 review.

24 MR. OGILVIE: I understand. I just want to
25 state for the record --

1 THE COURT: Yes.

2 MR. OGILVIE: -- of all the facts that -- the
3 purported facts that I heard in that presentation, the
4 City disclaims the validity of almost every one of
5 them.

6 THE COURT: I get it.

7 MR. OGILVIE: So the facts are in dispute.
8 But we don't get to the facts because this case at this
9 stage must be dismissed as a matter of law on the
10 pleadings.

11 And, again, I want to refer --

12 THE COURT: What about the amendment issue,
13 Mr. Ogilvie?

14 MR. OGILVIE: Okay. So I'll get to the
15 amendment issue, but I want to -- I want to focus on
16 the pleadings again because I heard it's in our
17 pleadings. And I want it to be very clear that the
18 pleadings are not the briefs supported in -- or
19 submitted in support of or in opposition to the motion.

20 The pleadings are what Rule 7 calls the
21 pleadings. And none of what I heard today -- well, I
22 shouldn't say none. That would be an overstatement.
23 Very little of what I heard in the developer's
24 presentation today is submitted -- is contained within
25 the four corners of that amended complaint that is the

1 subject of the motion for judgment on the pleadings.

2 Now -- I'm sorry, the Court's question was? I
3 lost my train of thought.

4 THE COURT: I did too. It's probably -- it's
5 4:15.

6 MS. LEONARD: The amendment.

7 THE COURT: Yeah, the amendment.

8 MR. OGILVIE: A, it's futile. There is no --
9 as established in our briefs and in my presentation
10 earlier, there is no vested right to develop this
11 property. I challenge the developer to show where
12 Judge Smith found that the developer had a vested
13 right. He didn't find that. There isn't such a
14 finding because it doesn't exist.

15 And as it relates to Sisolak, there is no
16 relation to this case. Sisolak involved a per se
17 taking and a physical invasion.

18 What we have before the Court today involved
19 no affirmative negative conduct towards the property.
20 Nothing was taken away from the developer in the four
21 applications that were denied that are before this
22 Court as an -- as the claim for inverse condemnation.

23 The only thing -- so the record --

24 THE COURT: So tell me this. How was that
25 different from Sisolak?

1 MR. OGILVIE: Sisolak was a physical invasion.
2 That is a per se taking. There's no way to see it
3 otherwise. There's nothing that the City did in this
4 case in denying these four applications that relates in
5 any way to what happened in Sisolak where the property
6 owner's rights, the property owner's property was being
7 invaded by the restrictions -- by the airplanes that
8 are flying within 500 feet above the level of the
9 property. Where the City passed ordinances,
10 Ordinance 1221 and 1599 which reduced the property
11 owner's ability to develop that property.

12 None of that exists in this case. This is not
13 a physical invasion. This is not a per se taking.
14 This is the City exercising its discretionary authority
15 to approve or deny land-use applications.

16 Nothing has been taken from the developer.
17 The developer has everything today that it purchased in
18 2015. And that's why Sisolak is absolutely
19 inapplicable. So --

20 THE COURT: Now, here's my question as far as
21 that is concerned. And the property was purchased in
22 2015. And we're talking more specifically the
23 35 acres. When it was purchased, it was purchased with
24 RDP7, right?

25 MR. OGILVIE: RPD7. And, again, Judge, the

1 City has maintained for -- let's see we filed our
2 opposition to the PJR, I believe, in late May. So for
3 ten months now in this case the City has conceded that
4 this property is zoned RPD7. It is totally irrelevant.
5 Because as this Court found, as -- and, again, I was
6 saying in my opening remarks, findings of fact 35
7 through 38, those -- of the Court's findings of fact
8 and conclusions of law that were entered on
9 November 21st, 2018. Those aren't just findings of
10 fact. Those are legal determinations that this Court
11 is bound by under Nevada law.

12 Those -- there is no vested right, therefore,
13 there is no taking. Therefore, the complaint cannot
14 state a cause of action for -- upon which relief can be
15 granted, because there -- if there's no vested right,
16 if the City has discretionary authority, which this
17 Court found that it did, and the City exercises that
18 discretionary authority -- if the City has
19 discretionary authority, which this Court found that it
20 did, there is no vested right. So, therefore --

21 THE COURT: Now, here's my next question. I
22 think this is a really, really important question. And
23 I remember this. You were very, very strident at the
24 time we were reviewing the petition for judicial
25 review. And you said, Look, Judge. They can't go

1 outside of the record. I remember you were very, very
2 strident on that issue.

3 MR. OGILVIE: I was right.

4 THE COURT: Yeah. And I accepted that.

5 MR. OGILVIE: Thank you.

6 THE COURT: Okay. Now, we have a different
7 scenario here. Are you saying that under the current
8 claim for relief sought in this matter that the
9 plaintiff, not the petitioner, can go, not just what
10 happened at the time there was a petition for judicial
11 review filed, but look at the entire action of the City
12 of Las Vegas as it relates to specifically its
13 decisions as it relates to the 38-acre parcel of
14 property that's at issue?

15 MR. OGILVIE: I will answer it this way.

16 THE COURT: Okay.

17 MR. OGILVIE: And I'm -- I'm not sure that I'm
18 answering your question, and if I'm not --

19 THE COURT: That's okay.

20 MR. OGILVIE: -- it's not because I'm dodging
21 it.

22 The action that the developer has claimed
23 constitutes a taking is the June 21, 2017, denial of
24 four land-use applications. That is at -- what is at
25 issue before this Court. That is the claimed taking.

1 That is what the complaint -- the amended complaint
2 that is before the Court today is -- it is that action
3 sought -- alleged in that amended complaint that is
4 deemed to be the taking that we are challenging.

5 THE COURT: Now, the reason why I asked that
6 question -- and I can't find it at my fingertips. This
7 is just based upon recollection. For example, there
8 were allegations made regarding the conduct of the City
9 council as it relates to passing or attempt to pass
10 ordinances that -- that are not general in nature, but
11 target a -- the plaintiff in this case, right? And I
12 think didn't that happen in October 2018, something
13 like that?

14 MR. LEAVITT: Around that area. It was in
15 2018, your Honor.

16 THE COURT: 2018. And so -- and so that's
17 why -- I mean, I sit back and I think about it. I
18 remember reading everything. And although I've read a
19 lot in between, but I thought that was -- I understand
20 it's not accepted. It's not a factual issue and those
21 types of things, but when I'm looking at this, and
22 that's why at the very outset of our rigorous
23 discussion, I always looked at it as you have one type
24 of action. And my review is very limited. In fact, I
25 agreed with you, you know. Limited to what happened,

1 and you were strident on that issue. I remember. And
2 I thought, You know what, Mr. Ogilvie might be right
3 here. And that's probably why I ruled the way I did.

4 However, now we're in a different scenario, a
5 different forum, a different review. In fact, it's not
6 a review. It's a -- yeah, potentially some of the
7 actions of the City council might be in play, but it's
8 a much different forum. That's probably the best way I
9 can say that.

10 So with that happening, and those allegations
11 out there -- and understand this, we're a notice
12 pleading jurisdiction. We all understand that under
13 Rule 8.

14 How can a trial court perform a judgment on
15 the pleadings when I think there is some sort of accord
16 in this regard, there's a lot of factual disputes here,
17 right? And that's my point. It becomes very difficult
18 for the trial court to do that.

19 MR. OGILVIE: Okay. And that gets to my
20 point: Factual contentions are not resolved at this
21 stage of the litigation.

22 THE COURT: Oh, I agree with that. I do.

23 MR. OGILVIE: Okay.

24 THE COURT: There's no doubt. You don't even
25 have to argue that.

1 MR. OGILVIE: Okay.

2 THE COURT: And that's not where I was going
3 at all.

4 MR. OGILVIE: Okay. But I want to go back
5 to --

6 THE COURT: 100 percent right there.

7 MR. OGILVIE: Thank you.

8 But I want to go back to what I said. The
9 alleged taking is the denial of four land-use
10 applications on June 21, 2017. Any action that
11 occurred after that is not part of the claimed taking
12 here. It's just an attempt by the developer to throw
13 everything against the wall in an attempt to -- that
14 some of it sticks.

15 So what took place over a year after the
16 passage of an ordinance? Well, if they deem that to be
17 a taking, they have the ability to file an action on
18 that taking in and of itself. But that's not what this
19 case is about.

20 This case is very, very narrow. It's -- and
21 this case wasn't -- wasn't framed by the City. We
22 didn't -- we didn't bring this action. The developer
23 brought the action.

24 And the developer said, This is what we're
25 complaining about. The City improperly denied four

1 land-use applications.

2 That was the basis of the petition for
3 judicial review, seeking this Court to substitute its
4 consideration of those four applications in place of
5 the City council's. And it also forms the basis --
6 that is the only thing that forms the basis for the
7 inverse condemnation claims.

8 So it is -- that is the taking. It's nothing
9 else. And that's why the Court can't take those into
10 consideration. And that's why the amendment -- that's
11 one of the reasons, okay. It's one of the reasons that
12 the amendment would be -- should be denied.

13 A, it's futile as I stated. There can't be a
14 taking without vested rights, and there's no vested
15 rights because the City had the discretion to approve
16 or deny those land-use applications.

17 B, the taking is limited to those four
18 land-use applications so anything that happened
19 subsequent to that is inapplicable and can't be
20 considered and shouldn't be part of this taking. Could
21 be considered in a separate action.

22 And also the developer engages in claims
23 splitting. It wants to bring in everything into -- all
24 the allegations of all the denials into this action
25 when it has separate actions pending before

1 Judge Sturman and previously Judge Israel. We don't
2 know where that case is going now.

3 But those are the actions that are the subject
4 of the 133 acres and the 65 acres. That developer now
5 wants to bring all that in here. That's claims
6 splitting. And we briefed that at length in our -- in
7 our motion and in our reply that it's improper. You
8 can't have the same claim being determined by two
9 different departments.

10 THE COURT: Now, tell me this. I mean, and I
11 do understand that. But we're dealing with different
12 parcels of property. What impact does that have, if
13 any?

14 MR. OGILVIE: Again, well, not -- yeah.
15 This action relates to the 35 acres.

16 THE COURT: Yes.

17 MR. OGILVIE: The four applications related to
18 the -- those 35 acres. Doesn't relate to the
19 133 acres, doesn't relate to the 65 acres, doesn't
20 relate to anything other than those four land-use
21 applications that were denied. And if those were a
22 taking, then -- then the result is what the result is.
23 The City maintains it can't be a taking because there's
24 no vested right to redevelop that property.

25 So -- and I'll go back to what I said in my

1 opening remarks, your Honor: Whether evidence of that
2 comes in or not into this proceeding is an issue for
3 another day, and I'm not even sure --

4 THE COURT: Absolutely. I agree 100 percent
5 with that. I mean, because I don't have an answer. I
6 don't. That's something I would anticipate could
7 potentially be hotly litigated. And as you were
8 talking about that, one thing for sure it appears like,
9 for example, in the Sisolak case, and I was just
10 looking at it, and they did have -- where they -- they
11 did discuss the developmental history of the project.

12 But I get where you're going. But I'm
13 wondering -- and this would be my query, and I don't
14 know the answer. Do you look at the actions of the
15 City council as a whole? You know, for example, would
16 the plaintiff's specific ordinances come in? I mean,
17 those are a lot of issues that have to be resolved.
18 But I'm not going to make a decision on that today.
19 But I clearly recognize that as an issue.

20 And I'm not going to jump ahead and say that
21 comes in or it doesn't come in. That's -- I agree
22 100 percent. Another day; right?

23 MR. OGILVIE: Okay.

24 So one of the things I heard in the
25 presentation today was that the City rejected the major

1 modification. That is absolutely -- well, the City
2 council, yeah -- I heard that the City council rejected
3 the application for major modification. That is
4 absolutely not true. It was the planning commission.
5 And I refer the Court to the hearing before
6 Judge Crockett on January 11, 2018. Reporter's
7 transcript of proceedings at page 16.

8 Chris Kaempfer, the developer's counsel, was
9 providing his comments, said:

10 "So when we talk about when the major
11 modification is required, it's required when
12 they ask us to do the whole thing. Now,
13 ironically then we present the whole thing in
14 front of the City council. the planning
15 commission, the planning commission denies it.
16 So we withdraw that portion of it and we move
17 forward only with the 17 acres."

18 So, again, these factual presentations that
19 were made today are disputed. This is just one example
20 of it wasn't the City council that denied any portion
21 of the major modification. It was the planning
22 commission. And because of that, the developer
23 withdrew the major modification.

24 From a 40,000-foot view, the developer's
25 predecessor, Peccole, sought the PROS designation. It

1 obtained it. It built a golf course. That is what the
2 developer purchased. The developer submitted four
3 applications to redevelop that property, which this
4 Court has already found was within the Court -- the
5 City council's decision-making authority to deny. In
6 fact, they were denied.

7 Because the City had that decision-making
8 authority, there is no vested right. There was no
9 vested right. Therefore, there is no taking. And
10 that's the end of the inquiry.

11 Whether or not the Court takes into
12 consideration the preclusive effect of Judge Crockett,
13 I submit that it's appropriate and it's a separate and
14 independent fact for denying -- for granting the motion
15 and dismissing these inverse condemnation actions. The
16 point is as a matter of law, there is no vested right
17 because the City was simply exercising its
18 decision-making authority.

19 And if there is no vested right, then there
20 can't be a taking. Because if there was a taking -- I
21 heard Mr. Bice say this during the break. He wants to
22 build a condominium in the back of his house, zoned
23 residential. So if he -- the City council denies it,
24 then he's going to sue the City for it. There are --
25 there is discretionary authority for it.

1 Now, that might be an absurd example because
2 certainly there's different density, but the point is
3 made; that you have to have a vested right to do the
4 thing that you are seeking before you can claim that
5 your property has been taken.

6 There hasn't been a taking. There has been no
7 adverse action against this property. The only thing
8 that's happened is the City properly exercised its
9 discretion-making authority to deny four land-use
10 applications. And, therefore, as a matter of law, the
11 motion must be granted and the inverse condemnation
12 claims must be dismissed.

13 MR. LEAVITT: Your Honor, may I reply to the
14 motion to amend?

15 THE COURT: Well, yeah -- I mean, procedurally
16 I have to give you that opportunity.

17 MR. LEAVITT: All right. And I'll be brief,
18 your Honor.

19 What the -- what Mr. Ogilvie has stated is
20 that we only get to argue one of our government
21 actions. We only get to argue Government Action -- or
22 City Action No. 1 to you. And, your Honor, I --
23 because of what you said, I didn't go through each and
24 every one of those City actions all up to No. 11. But,
25 your Honor, our claims against the City of Las Vegas

1 are not just limited to one denial, as Mr. Ogilvie just
2 represented to you.

3 Our claims are that the City of Las Vegas has
4 engaged in 11 different types of actions toward our
5 property, which amount to a taking of the property.
6 They're not limited to just one. And Mr. Ogilvie
7 doesn't get to dictate what our claims state.

8 Now, as far as the motion to amend is
9 concerned, your Honor, the law is very clear. They
10 should be freely given. I heard Mr. Ogilvie argue that
11 this is such an early part of the case that we
12 shouldn't have a motion for summary judgment granted.
13 If we're in such an early part of this case, then
14 motion for leave to grant an amendment to a complaint
15 should absolutely be given. And that was --

16 THE COURT: Well, I think what he said, he
17 wasn't dealing -- we wasn't specifically concerned
18 about the time. He said it was futile. That was the
19 argument.

20 MR. LEAVITT: Well, your Honor --

21 THE COURT: I'm just saying what he said.

22 MR. LEAVITT: I --

23 THE COURT: Whether it's not or not, I'm
24 not --

25 MR. LEAVITT: It's a --

1 THE COURT: -- in a moment from now I will.

2 MR. LEAVITT: Well -- I get it. But we're
3 early -- I get it.

4 But we're early in the proceedings, your
5 Honor. Your Honor even recognized that, that we're so
6 early in the proceedings that a motion for summary
7 judgment shouldn't be granted. Well, we should have
8 the opportunity to amend our pleadings because, your
9 Honor, many of the actions that the government engaged
10 in occurred after our original complaint.

11 And what Mr. Ogilvie is saying is that we have
12 to file a separate complaint for every single action
13 that the government engages in. That would actually be
14 improper claim splitting because it's to one piece of
15 property. You have to bring all of those actions into
16 one case, against -- against one piece of property.
17 And that's what we've done with our motion to amend,
18 was to include all of the government action in one
19 pleading. And we ask that you give us that
20 opportunity.

21 The other argument that Mr. Ogilvie stated is
22 that there are factual disputes. Okay. And,
23 therefore, the motion for summary judgment shouldn't be
24 granted. Well, the problem with that argument is, is
25 when there's a motion for a judgment on the pleadings

1 or a motion to dismiss, you have to assume that our
2 facts are true. And, your Honor, if you assume that
3 all of our facts are true that we've laid out in our
4 complaint, we've unequivocally stated that we filed a
5 major modification. We've unequivocally stated that we
6 have -- that our claims are ripe. We've unequivocally
7 stated that the government engaged in these taking
8 actions. Therefore, for purposes of a motion to
9 dismiss, these facts have to be assumed true. And if
10 they're assumed to be true, you can't dismiss the
11 claims at this point in time because we've made the
12 proper allegations and we've alleged the proper five
13 claims.

14 Now, the last issue that Mr. Ogilvie mentions
15 is this claim splitting, that it's improper. You know,
16 your Honor, we're asked them to consolidate. They said
17 no. And then they come into this case and they say,
18 Judge, you're claim splitting.

19 If the government wants to add the 65-acre,
20 the 133-acre, and the 17-acre case into this case,
21 which is the lowest case number, we would consider
22 that. I sent an email to Mr. Ogilvie and said, Hey,
23 the 65-acre case, why don't we join it with this
24 35-acre case? I heard nothing back. Yet, they come to
25 you and they say it's improper to split these claims,

1 after refusing that consolidation.

2 Now, Mr. Bice's example about being able to
3 build a condo in the back of his yard, that the
4 government should have discretion to do that, listen, I
5 agree the government has discretion to prohibit
6 Mr. Bice from building the condos in the back of his
7 house. But what the government doesn't have discretion
8 to do is to tell a landowner who has a hard-zoned
9 residential property, and his property is the land use
10 designated residential by the City of Las Vegas, that
11 he can't even turn a piece of dirt on that -- on that
12 property.

13 Your Honor, they won't even let him build a
14 fence --

15 THE COURT: I read all that. I did.

16 MR. LEAVITT: All right, your Honor.

17 But I'm just saying, the example is an
18 outrageous example that has no application in this case
19 that the government hasn't allowed us to use the
20 property for anything. And the Courts are
21 unequivocally clear that when the government does that,
22 when the government substantially interfered with the
23 use and enjoyment of the property, that's a taking.
24 And that's exactly what the government has done here.

25 So if you dismiss this complaint, you're going

1 to dismiss a case where we've unequivocally established
2 the taking facts. We don't think it's appropriate. We
3 think you should allow us to amend. Deny the City's
4 motion, and then let's do a 16.1 next week and move
5 forward in this case.

6 Thank you, your Honor.

7 THE COURT: All right. Thank you, sir.

8 Okay. I just want to -- when I think of this
9 case, and understand we have a 12(c) motion, you don't
10 see those as often as you see the 12(b) types of
11 motions. But under (c):

12 "The rule is designed to provide a means of
13 disposing of cases when material facts are not
14 in dispute, and a judgment on the merits can be
15 achieved by focusing on the contents of the
16 pleadings. It has utility only when all
17 material allegations of facts are admitted in
18 the pleadings and only questions of law
19 remain."

20 And the reason why I went back to Rule 12(c)
21 for everyone, we've had about three and a half, four
22 hours of factual disputes and arguments throughout this
23 entire hearing. And nobody can agree on what the
24 appropriate facts are, number one.

25 Secondly, I can't say as a matter of law under

1 any set of facts as alleged in the complaint, although
2 that's a slightly different standard, that the
3 plaintiffs have no case. I can't say that.

4 Just as important, too, in listening to the
5 argument, when I go back and I'm charged with reviewing
6 the complaints in this case, the plaintiff alleges a
7 vested property right, and I accept that, right? I do.
8 You know, that's a factual dispute. I get it. But
9 nonetheless, this is the pleading stage of the case.

10 Just as important, too, there's issues
11 regarding whether there's a taking or not. Another
12 important issue that has to be resolved factually.

13 Right now we've discussed a lot -- what I
14 would consider very -- a lot of significant issues
15 regarding -- number one, we talked about the
16 distinction between the evidentiary burdens in a
17 petition for judicial review versus a general civil
18 litigation case where the primary standard is by a
19 preponderance of the evidence, and that's a much
20 different standard too. It's a heightened standard.
21 And I think we can all agree in determining whether
22 there's substantial evidence in the record and whether
23 the decision of the fact finders on an administrative
24 level, or maybe legislative like the City council, are
25 arbitrary and capricious, or plain error as a matter of

1 law. That's the whole standard there.

2 So we -- you know, that's important to point
3 out. And that might give us guidance going down the
4 road.

5 Just as important, too, and this is a unique
6 issue, but -- as it deals with the statute of
7 limitations. I thought about it, and typically all
8 statutes of limitations are triggered by some sort of
9 act or actions, right? That's the triggering event.
10 And in this case, whether it's 2014, 2015, I'm going to
11 make a determination that the date that would
12 potentially trigger the statute of limitations wouldn't
13 be the master plan or necessarily the designation of
14 the property as RDP7, but it's the acts of the City
15 council that would control. I just want to tell you
16 that.

17 And consequently, what I'm going to do is
18 this: Regarding the motion pursuant to NRCP 12(c) to
19 dismiss, I'm going to deny that, right? It's very
20 early in the pleading stage.

21 I can't say as a matter of law the claims
22 sought for are futile in the amendment. I'm going to
23 grant that.

24 Last, but not least, like I said before, I
25 think it would -- it would have been plain error as a

1 matter of law to even consider the Rule 56 motion for
2 summary judgment, and that's denied.

3 Consequently, we can move forward with this
4 litigation.

5 Last, but not least, as far as time for a
6 16.1, I have no clue what's on my calendar next week.
7 I can just tell you that. We can check. We'll try to
8 be very efficient. This is what Lynn said. We
9 anticipated this question.

10 Oh, Lynn verified answer filed. Next
11 available 16.1 conference in business court is 4/2/19.
12 So I can give you a date right now. We're pretty
13 efficient.

14 MR. HUTCHISON: 9:00 a.m.?

15 THE COURT: No. We do those at 10:30. So if
16 there's no conflict, you got a date.

17 MR. LEAVITT: Your Honor, we're going to make
18 it work.

19 THE COURT: All right. That's the next date I
20 have available.

21 And, Mr. Leavitt?

22 MR. LEAVITT: Yes, your Honor.

23 THE COURT: Prepare the order, sir.

24 MR. LEAVITT: We'll prepare the order, your
25 Honor.

1 THE COURT: Make sure Mr. Ogilvie gets a copy
2 and all those wonderful things.

3 MS. LEONARD: Just to clarify, the motion is
4 estopped?

5 THE COURT: We have something here. I don't
6 even know if this is -- I'm trying to figure this out.
7 Plaintiff landowner's motion to estop the City's
8 private attorney from making major modification
9 arguments, we didn't even -- that's moot, isn't it?

10 MR. LEAVITT: It is, your Honor.

11 THE COURT: Okay.

12 MR. BICE: Well, that's the only reason I'm
13 here. I don't know how it's moot.

14 THE COURT: Well --

15 MR. BICE: I mean, if they were withdrawing
16 it --

17 THE COURT: Okay.

18 MR. BICE: But that's the only reason I'm
19 here, is because --

20 THE COURT: Mr. Bice, I respect that.

21 That's been withdrawn, is that correct?

22 MR. LEAVITT: Your Honor, what we'll do, we
23 will withdraw that at this point in time. If we -- if
24 we think it has merit for a later time, we'll bring it
25 at that time.

1 MR. BICE: Well, I guess, then I'll just have
2 to monitor, your Honor. Because I agree. When you
3 made the observation that you don't think my clients
4 are really properly in an inverse condemnation action,
5 I generally agree with that proposition.

6 THE COURT: Yeah.

7 MR. BICE: That's why I didn't file any briefs
8 on this.

9 THE COURT: I know.

10 MR. BICE: But this pleading, your Honor, this
11 is just a back door around the rulings that my clients
12 spent a lot of money to obtain against this developer.

13 THE COURT: I understand, sir.

14 MR. BICE: And so I'm not going to -- I
15 respect the Court saying that you're not -- I agree
16 with the general proposition that you're not bound by
17 the other Court's decision, unless the law says that
18 you're bound.

19 THE COURT: Right.

20 MR. BICE: And that's my point, is my client
21 litigated an issue, prevailed. And my client actually
22 has the right to enforce that ruling.

23 THE COURT: I understand.

24 MR. BICE: And that ruling -- and that -- the
25 developer can't circumvent it by just going into

1 another courtroom and saying, Well, you know, let's
2 just disregard what Judge Crockett ruled about this
3 golf course.

4 THE COURT: Right.

5 MR. BICE: That's the only reason I'm here. I
6 don't -- I didn't really care to spend my Friday
7 afternoon when it's 70 degrees outside sitting in the
8 back here. So next time --

9 THE COURT: And it's the second day of the
10 tournament.

11 MR. BICE: Exactly. Exactly. That's what I'm
12 particularly outraged about --

13 THE COURT: I know.

14 MR. BICE: -- is that I'm missing basketball
15 games right now.

16 THE COURT: I agree.

17 MR. BICE: But that's the only reason we're
18 here. We do not intend to participate in any 16.1,
19 your Honor. I actually think for the record you're
20 actually -- they prepared the order. It says
21 "bifurcation." It didn't severe --

22 THE COURT: Yes.

23 MR. BICE: -- the claims. But nonetheless, we
24 don't intend to participate, but if they're going to
25 try and end run that prior adverse ruling, my client

1 does have standing to enforce that ruling. And that's
2 the only reason we're here.

3 THE COURT: I understand. Right.

4 MR. HUTCHISON: Your Honor, I was going to
5 handle the argument on this. I won't because it's been
6 withdrawn, right? So as I understand it, we are not
7 substantively arguing the motion today; is that
8 correct?

9 THE COURT: We're not.

10 MR. HUTCHISON: Okay. So we have responses to
11 everything that Mr. Bice just said, but we'll wait for
12 another day. We think the Court is absolutely right,
13 as far as standing. And standing has to do with what's
14 going on in this case.

15 THE COURT: Correct.

16 MR. HUTCHISON: Thank you, your Honor.

17 THE COURT: And I don't know what happened --
18 I mean, I didn't prepare the order because, you know,
19 technically when you bifurcate, and we do -- we did
20 that all the time in construction defect -- that's just
21 having certain phases of the trial tried -- I know you
22 know what I'm talking about.

23 MR. HUTCHISON: Yes. Thank you.

24 THE COURT: So technically it's a severance,
25 you know.

1 MR. LEAVITT: All right. Thank you, your
2 Honor.

3 MR. OGILVIE: Thank you.

4 Your Honor.

5 THE COURT: Sir?

6 MR. OGILVIE: Before we break, I thought the
7 Court was going to issue a ruling on the Motion for
8 Reconsideration today.

9 THE COURT: Yeah. And I have a minute order
10 ready to go as far as -- I'll tell you what it is. I'm
11 denying the motion for reconsideration.

12 MR. OGILVIE: Thank you.

13 MR. HUTCHISON: Thank you, your Honor.

14 THE COURT: And we'll issue a minute order on
15 that.

16 MR. OGILVIE: Thank you.

17 THE COURT: And you can prepare the order on
18 that.

19 MR. OGILVIE: Thank you. If I could approach,
20 your Honor.

21 THE COURT: Yes.

22 (Proceedings were concluded.)

23 * * * * *

24

25

REPORTER'S CERTIFICATE

STATE OF NEVADA)

:SS

COUNTY OF CLARK)

I, PEGGY ISOM, CERTIFIED SHORTHAND REPORTER DO
HEREBY CERTIFY THAT I TOOK DOWN IN STENOTYPE ALL OF THE
PROCEEDINGS HAD IN THE BEFORE-ENTITLED MATTER AT THE
TIME AND PLACE INDICATED, AND THAT THEREAFTER SAID
STENOTYPE NOTES WERE TRANSCRIBED INTO TYPEWRITING AT
AND UNDER MY DIRECTION AND SUPERVISION AND THE
FOREGOING TRANSCRIPT CONSTITUTES A FULL, TRUE AND
ACCURATE RECORD TO THE BEST OF MY ABILITY OF THE
PROCEEDINGS HAD.

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED
MY NAME IN MY OFFICE IN THE COUNTY OF CLARK, STATE OF
NEVADA.

PEGGY ISOM, RMR, CCR 541

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Attorneys for Plaintiff Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited liability company, FORE STARS, Ltd, SEVENTY ACRES, LLC, a Nevada limited liability company, DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, and DOE LIMITED LIABILITY COMPANIES I through X,

Plaintiffs,

vs.

CITY OF LAS VEGAS, political subdivision of the State of Nevada, et al.,

Defendant.

Case No.: A-17-758528-J
Dept. No.: XVI

**PLAINTIFF LANDOWNERS'
REQUESTS FOR ADMISSION TO THE
CITY OF LAS VEGAS**

FIRST REQUEST

1 TO: THE CITY OF LAS VEGAS, Defendant; and
2 TO: COUNSEL OF RECORD FOR THE CITY OF LAS VEGAS.

3 Pursuant to the provisions of Nevada Rules of Civil Procedure, Rule 36, Plaintiffs 180 LAND
4 COMPANY, LLC, a Nevada limited liability company, FORE STARS, Ltd, SEVENTY ACRES,
5 LLC, a Nevada limited liability company (hereinafter "Landowner" and/or "Landowners"), by and
6 through their undersigned attorney, the Law Offices of Kermitt L. Waters, hereby propounds Plaintiff
7 Landowners' Requests for Admission to the City of Las Vegas (hereinafter "City") - First Request
8 as follows:

9 **GENERAL DEFINITIONS**

10 The following terms used in these Requests, whether capitalized or lowercase, have the
11 meaning ascribed to them as follows:

12 (a) The terms "and" and "or" shall be construed either disjunctively or conjunctively
13 whenever appropriate in order to bring within the scope of this discovery request any information
14 or documents which might otherwise be considered beyond its scope.

15 (b) The term "communication", its plural or any synonym thereof, means any
16 dissemination of information or transmission of a statement from one person to another, or in the
17 presence of another, whether by written, oral, or electronic means or by action or conduct and shall
18 include, but is not limited to, every discussion, conversation, conference, meeting, interview,
19 memorandum, telephone call, and/or visit.

20 (c) The term "document", and the plural form thereof, mean the original (or any copies
21 when originals are not available) and any nonidentical copies (whether different from originals by
22 reason of notation made on such copies or otherwise) or any book, pamphlet, periodical, letter,
23 report, note, memorandum, correspondence, record, minutes, log, diary, study, compilation, analysis,
24 tabulation, map, diagram, drawing, plan, picture, photograph, summary, working paper, chart, paper,
25 graph, index, data sheet, data processing card, computer run, summary of computer run, computer
26 disc, floppy disk, hard disk, tape, contract, agreement, lease, ledger, journal, balance sheet, account,
27 invoice, purchase order, receipt, billing record, diary, film, trip ticket, telex, facsimile, teletype
28

1 message, expense voucher, instructions, bulletins, or any other message or writing, however
2 produced or reproduced, and includes any mechanical recording or reproduction of any oral material.

3 (d) The term “fact” means, without limitation, every matter, occurrence, act, event,
4 transaction, occasion, instance, circumstance, representation, or other happening, by whatever name
5 it is known.

6 (e) The terms “identify” or “identification”, their plurals or synonyms thereof, when used
7 with reference to a person, mean to describe a person in sufficient detail to permit service of a
8 subpoena. The identification of a person shall include: (i) full name; (ii) last known residence,
9 address, and telephone number; (iii) last known business address and telephone number; and (iv) last
10 known occupation, with a description of job title, capacity, or position.

11 (f) The terms “identify” or “identification”, their plurals or synonyms thereof, when used
12 with reference to a document, mean to describe a document in sufficient detail to permit service of
13 a subpoena duces tecum. The identification of a document shall include: (i) the general nature of
14 the document or object, i.e., whether it is a letter, memorandum, report, drawing, chart, tracing,
15 pamphlet, etc.; (ii) the general subject matter of the document and/or object; (iii) the name, and
16 current or last known business address and home address of the original author or draftsman (and,
17 if different, the signor/signors), and of any person who edited, corrected, revised or amended, and/or
18 has entered any initials, comments, or notations thereon; (iv) the date thereof, including any date of
19 any such edition, correction, amendment, and/or revision; (v) any numerical designation appearing
20 thereon, such as a file reference and/or Bates-stamp; (vi) the name of each recipient of a copy of the
21 document and/or object; and, (vii) the place where any person now having custody or control of each
22 such document or object, resides or works, or if such document or object has been destroyed, the
23 place of and reasons for such destruction.

24 (g) The term “Landowner” and any plural thereof, shall mean the Plaintiffs, 180 LAND
25 COMPANY, LLC, a Nevada limited liability company, FORE STARS, Ltd, SEVENTY ACRES,
26 LLC, a Nevada limited liability company, in this action, including any representative of these
27 entities, including but not limited to Yohan Lowie, Vickie DeHart, Frank Pankratz and Brett
28 Harrison.

1 (h) The term “person” means any natural person, firm, business, corporation, partnership,
2 sole proprietorship, estate, trust, trust estate, joint venture, association, group, organization, or
3 governmental agency (whether federal, state, or local), or any agent thereof.

4 (i) The term “project,” or “Project” refers to the entire project for which the Plaintiff
5 alleges the subject property or subject properties are being taken/acquired in this case.

6 (j) The “Subject Property,” “subject property,” “subject properties,” or “Landowners’
7 Property” includes and refers to the Landowners’ Property specifically designated Clark County
8 Assessor’s Parcel Numbers as follows:

9 35 Acre Property - 138-31-201-005;

10 17 Acre Property - 138-32-301-005;

11 65 Acre Property - 138-31-801-002, 138-31-801-003, 138-32-301-007; and

12 133 Acre Property - 138-31-601-008, 138-31-702-003, 138-31-702-004.

13 The Subject Property also includes that property commonly known as the Badlands Golf
14 Course or the 250 Acre Residential Zoned Land.

15 (k) The term “writing”, and the plural form thereof, means the original (or any copies
16 when originals are not available) and any nonidentical copies (whether different from originals by
17 reason of notation made on such copies or otherwise) or any book, pamphlet, periodical, letter,
18 report, note, memorandum, correspondence, record, minutes, log, diary, study, compilation, analysis,
19 tabulation, map, diagram, drawing, plan, picture, photograph, summary, working paper, chart, paper,
20 graph, index, data sheet, data processing card, computer run, summary of computer run, computer
21 disc, floppy disk, hard disk, tape, contract, agreement, lease, ledger, journal, balance sheet, account,
22 invoice, purchase order, receipt, billing record, diary, film, trip ticket, telex, facsimile, teletype
23 message, expense voucher, instructions, bulletins, or any other message or writing, however
24 produced or reproduced, and includes any mechanical recording or reproduction of any oral material.

25 (l) The term “you,” and its plural, or any synonym thereof, shall mean Defendant,
26 including but not limited to all of its present or past agents, employees, representatives, consultants,
27 managers, members, insurers, successors, assigns, and, unless privileged, attorneys and accountants,
28 and its parent, subsidiary, and affiliated companies, corporations, and business entities, and all other
natural persons or business or legal entities acting or purporting to act for or on behalf of Defendant,

1 whether authorized to do so or not, and all others who are in possession of or may have obtained
2 information on behalf of Defendant as context dictates.

3 **INSTRUCTIONS**

4 1. Each Request should be construed independently. No Request should be construed
5 by reference to any other Request if the result is a limitation of the scope of the response to such
6 Request.

7 2. When a Request calls for a response in more than one part, each part should be
8 separate so that the answer is clearly understandable.

9 3. Whenever you are unable to provide a response to these Requests based upon your
10 personal knowledge, provide what you believe the correct response to be, and the facts upon which
11 you base your response.

12 4. If you object to a Request, either in whole or in part, or if the information regarding
13 the response to a Request is withheld on the grounds of privilege or otherwise, please set forth fully
14 each and every objection, describing generally the document withheld and set forth the exact ground
15 upon which you rely with such specificity as will permit the Court to determine the legal sufficiency
16 of your objection or position upon a motion to compel.

17 5. The singular form of a word shall be interpreted as plural and the plural form of a
18 word shall be interpreted as singular whenever appropriate in order to bring within the scope of these
19 Requests any information or documents which might otherwise be considered to be beyond their
20 scope.

21 6. The knowledge of any of your attorneys, if any, is deemed to be your knowledge of
22 the information sought to be produced herein, and said knowledge must be incorporated into these
23 responses, even if such information is personally unknown by you.

24 7. These Requests are continuing in nature, and you are therefore requested to
25 supplement your answers to each of these Requests with any information that you obtain following
26 your initial answers hereto that would reasonably be deemed to be within the scope of these
27 Requests.

28 //

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1:

For each and every document listed below, please admit that it is a true and correct copy of the original and/or that you will not challenge that it is a true and correct copy of the original so as to dispense with any foundationary authentication requirements of the NRS 52.015. Copies of these documents have been furnished previously in the Landowners' Appendix of Exhibits and the supplements thereto.

Exhibit No.	Exhibit Description	Vol. No.	Bates No.
1	Map of 250 Acre Residential Zoned Land Identifying Each Parcel	1	LO 00000001
2	Bill No. Z-2001-1: Ordinance No. 5353 Dated 8.15.2001	1	LO 00000002-00000083
3	12.30.14 Letter City of Las Vegas to Frank Pankratz "Zoning Verification" letter	1	LO 00000084
4	11.16.16 City Council Meeting Transcript Items 101-107	1-2	LO 00000085-00000354
5	6.21.17 City Council Meeting Transcript Items 82, 130-134	2	LO 00000355-00000482
6	5.16.18 City Council Meeting Transcript Items 71, 74-83	2-3	LO 00000483-00000556
7	Notice of Entry of Findings of Fact, Conclusions of Law, Final Order and Judgment, Eighth Judicial District Court Case No. A-16-739654-C filed 1.31.17	3	LO 00000557-00000601
8	Intentionally left blank	3	LO 00000602-00000618
9	12.7.16 Letter From Jimmerson to Jerbic	3	LO 00000619-00000627
10	City of Las Vegas' Answering Brief, Eighth Judicial District Court Case No. A-17-752344-J filed 10.23.17	3	LO 00000628-00000658
11	7.12.16 City of Las Vegas Planning Commission Meeting Transcript excerpts Items 4, 6, 29-31, 32-35	3	LO 00000659-00000660
12	Staff Recommendation 10.18.16 Special Planning Commission Meeting	3	LO 00000661-00000679
13	10.18.16 Special Planning Commission Meeting Agenda Items 10-12 Summary Pages	3	LO 00000680-00000685

1	14	2.15.17 City Council Meeting Transcript Items 100-102	3-4	LO 00000686-00000813
2	15	LVMC 19.10.040	4	LO 00000814-00000816
3	16	LVMC 19.10.050	4	LO 00000817-00000818
4	17	Staff Recommendation 2.15.17 City Council Meeting GPA-62387, ZON-62392, SDR-62393	4	LO 00000819-00000839
5	18	2.15.17 City Council Agenda Summary Pages Items 100-102	4	LO 00000840-00000846
6	19	Seroka Campaign Contributions	4	LO 00000847-00000895
7	20	Crear Campaign Contributions	4	LO 00000896-00000929
8	21	2.14.17 Planning Commission Transcript Items 21-14 portions with video still	4	LO 00000930-00000931
9	22	35 Acre Applications: SDR-68481; TMP- 68482; WVR-68480	4	LO 00000932-00000949
10	23	Staff Recommendation 6.21.17 City Council Meeting GPA-68385, WVR-68480, SDR-68481, TMP 68482	4	LO 00000950-00000976
11	24	8.2.17 City Council Meeting Transcript Item 8 (excerpt) and Items 53 and 51	4-5	LO 00000977-00001131
12	25	MDA Combined Documents	5	LO 00001132-00001179
13	26	Email between City Planning Section Manager, Peter Lowenstein, and Landowner representative Frank Pankratz dated 2.24.16	5	LO 00001180-00001182
14	27	Email between City Attorney Brad Jerbic and Landowner's land use attorney Stephanie Allen, dated 5.22.17	5	LO 00001183-00001187
15	28	16 versions of the MDA dating from January, 2016 to July, 2017	5-7	LO 00001188-00001835
16	29	The Two Fifty Development Agreement's Executive Summary	8	LO 00001836
17	30	City requested concessions signed by Landowners representative dated 5.4.17	8	LO 00001837
18	31	Badlands Development Agreement CLV Comments, dated 11-5-15	8	LO 00001838-00001845
19	32	Two Fifty Development Agreement (MDA) Comparison – July 12, 2016 and May 22, 2017	8	LO 00001846-00001900
20	33	The Two Fifty Design Guidelines, velopment Standards and Uses, comparison of the March 17, 2016 and May, 2017 versions	8	LO 00001901-00001913

34	Seroka Campaign Literature	8	LO 00001914-00001919
35	2017-12-15 Thoughts on: Eglet-Prince Opioid Proposed Law Suit	8	LO 00001920-00001922
36	Tax Assessor's Values for 250 Acre Residential Land	8	LO 00001923-00001938
37	City's Motion to Dismiss Eighth Judicial District Case No. A-18-773268-C, filed 7/2/18	8	LO 00001939-00001963
38	1.11.18 Hearing Transcript, Eighth Judicial District Court Case No. A-17-752344-J	8-9	LO 00001964-00002018
39	City's Motion to Dismiss Eighth Judicial District Case No. A-18-775804-J, filed 8.27.18	9	LO 00002019-00002046
40	Staff Recommendation 6.21.17 City Council Meeting DIR-70539	9	LO 00002047-00002072
41	9.6.17 City Council Meeting Agenda Summary Page for Item No. 26	9	LO 00002073-00002074
42	9.4.18 meeting submission for Item No. 4 by Stephanie Allen	9	LO 00002075
43	5.16.18 City Council Meeting Agenda Summary Page for Item No. 66	9	LO 00002076-00002077
44	5.16.18 City Council Meeting Transcript Item No. 66	9	LO 00002078-00002098
45	Bill No. 2018-5 "Proposed First Amendment (5-1-18 Update)"	9	LO 00002099-00002105
46	Bill No. 2018-24	9	LO 00002106-00002118
47	October/November 2017 Applications for the 133 Acre Parcel: GPA-7220; WVR-72004, 72007, 72010; SDR-72005, 72008, 72011; TMP-72006, 72009, 72012	9-10	LO 00002119-00002256
48	Staff Recommendation 5.16.18 City Council Meeting GPA-72220	10	LO 00002257-00002270
49	11.30.17 Justification Letter for GPA-72220	10	LO 00002271-00002273
50	2.21.18 City Council Meeting Transcript Items 122-131	10	LO 00002274-00002307
51	5.16.18 City Council Meeting Agenda Summary Page for Item Nos. 74-83	10	LO 00002308-00002321
52	3.21.18 City Council Meeting Agenda Summary Page for Item No. 47	10	LO 00002322-00002326
53	5.17.18 Letters from City to Applicant Re: Applications Stricken	10	LO 00002327-00002336

54	Coffin Email	10	LO 00002337-00002344
55	8.10.17 Application For Walls, Fences, Or Retaining Walls Single Lot Only	10	LO 00002345-00002352
56	8.24.17 Letter from City of Las Vegas to American Fence Company	10	LO 00002353
57	LVMC 19.16.100	10	LO 00002354-00002358
58	6.28.16 Letter from Mark Colloton to Victor Bolanos, City of Las Vegas public Works Dept.	10	LO 00002359-00002364
59	8.24.17 Letter from the City of Las Vegas to Seventy Acres, LLC	10	LO 00002365
60	1990 Peccole Ranch Master Plan	10	LO 00002366-00002387
61	1.3.18 City Council Meeting Transcript Item No. 78	10	LO 00002388-00002470
62	Exhibit F-1 2.22.16 with annotations	10	LO 00002471-00002472
63	Southern Nevada GIS – OpenWeb Info Mapper Parcel Information	10-11	LO 00002473-00002543
64	Southern Nevada GIS – OpenWeb Info Mapper Parcel Information	11	LO 00002544-00002545
65	Email between Frank Schreck and George West 11.2.16	11	LO 00002546-00002551
66	Master Declaration of Covenants, Conditions, Restrictions and Easement For Queensridge	11	LO 00002552-00002704
67	Amended and Restated Master Declaration of Covenants, Conditions, Restrictions and Easement For Queensridge effective 10.1.2000	11	LO 00002705
68	Findings of Fact, Conclusions of Law and Judgment Granting Defendants Fore Stars, LTD., 180 Land Co LLC, Seventy Acres LLC, EHB Companies LLC, Yohan Lowie, Vickie Dehart and Frank Prankratz's NRCP 12(b)(5) Motion to Dismiss Plaintiffs' Amended Complaint, Eighth Judicial District Court Case No. A-16-739654-C Filed 11.30.16	11	LO 00002706-00002730
69	Custom Lots at Queensridge North Purchase Agreement, Earnest Money Receipt and Escrow Instructions	11	LO 00002731-00002739
70	Land Use Hierarchy Exhibit	11	LO 00002740
71	2.14.17 Planning Commission Transcript Agenda Items 21-14	11-12	LO 00002741-00002820

72	Order Granting Plaintiffs' Petition for Judicial Review Eighth Judicial District Court Case No. A-17-752344-J filed 3.5.18	12	LO 00002821-00002834
73	City of Las Vegas' Reply In Support of Its Motion to Dismiss and Opposition To Petitioner's Countermotion to Stay Litigation, Eighth Judicial District Court Case No. A-17-758528-J filed on 12.21.17	12	LO 00002835-00002840
74	Notice of Entry of Order Denying Motion to Dismiss and [Granting] Countermotion to Stay Litigation, Eighth Judicial District Court Case No. A-17-758528-J filed on 2.2.18	12	LO 00002841-00002849
75	Complaint in Eighth Judicial District Court Case No. A434337 filed 5.7.01	12	LO 00002850-00002851
76	Email	12	LO 00002852
77	6.13.17 PC Meeting Transcript	12	LO 00002853-00002935
78	1.23.17 onsite Drainage Agmt.	12	LO 00002936-00002947
79	9.11.18 PC – Hardstone Temp Permit Transcript	12	LO 00002948-00002958
80	Estate Lot Concepts	12	LO 00002959-00002963
81	Text Messages	12	LO 00002964-00002976
82	Intentionally left blank	12	Not bates stamped
83	Judge Smith Nov. 2016 Order	13	LO 00002977-00002982
84	Supreme Court Affirmance	13	LO 00002983-00002990
85	City Confirmation of R-PD7	13	LO 00002991-00003020
86	De Facto Case Law	13	LO 00003021-00003023
87	Johnson v. McCarran	13	LO 00003024-00003026
88	Boulder Karen v. Clark County	13	LO 00003027-00003092
89	Supreme Court Order Dismissing Appeal <i>in part</i> and Reinstating Briefing	13	LO 00003093-00003095
90	Bill No. 2018-24	13	LO 00003096-00003108
91	July 17, 2018 Hutchinson Letter in Opposition of Bill 2018-24	13	LO 00003109-00003111
92	October 15, 2018 Allen Letter in Opposition to Bill 2018-24 (Part 1 of 2)	13-14	LO 00003112-00003309
93	October 15, 2018 Allen Letter in Opposition to Bill 2018-24 (Part 2 of 2)	14-15	LO 00003310-00003562
94	Minutes from November 7, 2018 Recommending Committee Re Bill 2018-24	15	LO 00003563-00003564

95	Verbatim Transcript from October 15, 2018 Recommending Committee Re Bill 2018-24	15	LO 00003565-00003593
96	Minutes from November 7, 2018 City Council Hearing Re Bill 2018-24	15	LO 00003594-00003595
97	Verbatim Transcript from November 7, 2018 City Council Meeting Adopting Bill 2018-24	15-16	LO 00003596-00003829
98	Supreme Court Order Denying Rehearing	16	LO 00003830-00003832
99	Deposition of Greg Steven Goorjian	16	LO 00003833-00003884
100	2019.01.07 Robert Summerfield Email	16	LO 00003885
101	2019.02.06 Judge Williams' Order Nunc Pro Tunc Regarding Findings of Fact and Conclusion of Law Entered November 21, 2019	16	LO 00003886-00003891
102	2019.02.15 Judge Sturman's Minute Order re Motion to Dismiss	16	LO 00003892
103	2019.01.23 Judge Bixler's Transcript of Proceedings	16	LO 00003893-00003924
104	2019.01.17 Judge Williams' Recorder's Transcript of Plaintiff's Request for Rehearing	16	LO 00003925-00003938
105	Approved Land Uses in Peccole Conceptual Plan	16	LO 00003939
106	2020 Master Plan – Southwest Sector Zoning	16	LO 00003940
107	35 Acre in Relation to Pecocole Plan	16	LO 00003941
108	CLV Hearing Documents on Major Modifications	17	LO 00003942-00004034
109	GPA Code and Application	17	LO 00004035-00004044

DATED the 15th day of April, 2019.

LAW OFFICES OF KERMIT L. WATERS

By: /s/ Autumn Waters, Esq.
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Attorneys for Plaintiff Landowners

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that I am an employee of the Law Offices of Kerritt L. Waters, and
3 that on the 15th day of April, 2019, pursuant to NRCP 5(b) and EDCR 8.05(f), a true and correct copy
4 of the foregoing document(s): **PLAINTIFF LANDOWNERS' REQUESTS FOR ADMISSION**
5 **TO CITY OF LAS VEGAS - FIRST REQUESTS** was made by electronic means pursuant to
6 EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's
7 electronic filing system, with the date and time of the electronic service substituted for the date and
8 place of deposit in the mail and addressed to each of the following:

9 **McDonald Carano LLP**

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26 */s/ Evelyn Washington*

27 Evelyn Washington, an Employee of the
28 Law Offices of Kerritt L. Waters

RFP

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Attorneys for Plaintiff Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited liability company, FORE STARS, Ltd, SEVENTY ACRES, LLC, a Nevada limited liability company, DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, and DOE LIMITED LIABILITY COMPANIES I through X,

Plaintiffs,

vs.

CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entities I through X, ROE CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entities I through X,

Defendant.

Case No.: A-17-758528-J
Dept. No.: XVI

**PLAINTIFF LANDOWNERS' REQUEST
FOR PRODUCTION OF DOCUMENTS
TO THE CITY OF LAS VEGAS**

FIRST REQUEST

1 TO: THE CITY OF LAS VEGAS, Defendant; and

2 TO: COUNSEL OF RECORD FOR THE CITY OF LAS VEGAS.

3 Pursuant to the provisions of Nevada Rules of Civil Procedure, Rule 34, Plaintiffs, 180
4 LAND COMPANY, LLC, a Nevada limited liability company, FORE STARS, Ltd, SEVENTY
5 ACRES, LLC, a Nevada limited liability company, (hereinafter “Landowner” and/or “Landowners”)
6 by and through their undersigned attorney, the Law Offices of Kermitt L. Waters, hereby propounds
7 Plaintiff Landowners’ Request for Production of Documents to the City of Las Vegas (hereinafter
8 “City”) - First Request as follows:

9 **GENERAL DEFINITIONS**

10 The following terms used in these Requests, whether capitalized or lowercase, have the
11 meaning ascribed to them as follows:

12 (a) The terms “and” and “or” shall be construed either disjunctively or conjunctively
13 whenever appropriate in order to bring within the scope of this discovery request any information
14 or documents which might otherwise be considered beyond its scope.

15 (b) The term “communication”, its plural or any synonym thereof, means any
16 dissemination of information or transmission of a statement from one person to another, or in the
17 presence of another, whether by written, oral, or electronic means or by action or conduct and shall
18 include, but is not limited to, every discussion, conversation, conference, meeting, interview,
19 memorandum, telephone call, and/or visit.

20 (c) The term “document”, and the plural form thereof, mean the original (or any copies
21 when originals are not available) and any nonidentical copies (whether different from originals by
22 reason of notation made on such copies or otherwise) or any book, pamphlet, periodical, letter,
23 report, note, memorandum, correspondence, record, minutes, log, diary, study, compilation, analysis,
24 tabulation, map, diagram, drawing, plan, picture, photograph, summary, working paper, chart, paper,
25 graph, index, data sheet, data processing card, computer run, summary of computer run, computer
26 disc, floppy disk, hard disk, tape, contract, agreement, lease, ledger, journal, balance sheet, account,
27 invoice, purchase order, receipt, billing record, diary, film, trip ticket, telex, facsimile, teletype

1 message, expense voucher, instructions, bulletins, or any other message or writing, however
2 produced or reproduced, and includes any mechanical recording or reproduction of any oral material.

3 (d) The term “fact” means, without limitation, every matter, occurrence, act, event,
4 transaction, occasion, instance, circumstance, representation, or other happening, by whatever name
5 it is known.

6 (e) The terms “identify” or “identification”, their plurals or synonyms thereof, when used
7 with reference to a person, mean to describe a person in sufficient detail to permit service of a
8 subpoena. The identification of a person shall include: (i) full name; (ii) last known residence,
9 address, and telephone number; (iii) last known business address and telephone number; and (iv) last
10 known occupation, with a description of job title, capacity, or position.

11 (f) The terms “identify” or “identification”, their plurals or synonyms thereof, when used
12 with reference to a document, mean to describe a document in sufficient detail to permit service of
13 a subpoena duces tecum. The identification of a document shall include: (i) the general nature of
14 the document or object, i.e., whether it is a letter, memorandum, report, drawing, chart, tracing,
15 pamphlet, etc.; (ii) the general subject matter of the document and/or object; (iii) the name, and
16 current or last known business address and home address of the original author or draftsman (and,
17 if different, the signor/signors), and of any person who edited, corrected, revised or amended, and/or
18 has entered any initials, comments, or notations thereon; (iv) the date thereof, including any date of
19 any such edition, correction, amendment, and/or revision; (v) any numerical designation appearing
20 thereon, such as a file reference and/or Bates-stamp; (vi) the name of each recipient of a copy of the
21 document and/or object; and, (vii) the place where any person now having custody or control of each
22 such document or object, resides or works, or if such document or object has been destroyed, the
23 place of and reasons for such destruction.

24 (g) The term “Landowner” and any plural thereof, shall mean the Plaintiffs, 180 LAND
25 COMPANY, LLC, a Nevada limited liability company, FORE STARS, Ltd, SEVENTY ACRES,
26 LLC, a Nevada limited liability company, in this action, including any representative of these
27
28

1 entities, including but not limited to Yohan Lowie, Vickie DeHart, Frank Pankratz, and Brett
2 Harrison.

3 (h) The term “person” means any natural person, firm, business, corporation, partnership,
4 sole proprietorship, estate, trust, trust estate, joint venture, association, group, organization, or
5 governmental agency (whether federal, state, or local), or any agent thereof.

6 (i) The term “project,” or “Project” refers to the entire project for which the Plaintiff
7 alleges the subject property or subject properties are being taken/acquired in this case.

8 (j) The “Subject Property,” “subject property,” “subject properties,” or “Landowners’
9 Property” includes and refers to the Landowners’ Property specifically designated Clark County
10 Assessor’s Parcel Numbers as follows:

11 35 Acre Property - 138-31-201-005;

12 17 Acre Property - 138-32-301-005;

13 65 Acre Property - 138-31-801-002, 138-31-801-003, 138-32-301-007; and

14 133 Acre Property - 138-31-601-008, 138-31-702-003, 138-31-702-004.

15 The Subject Property also includes that property commonly known as the Badlands Golf
16 Course or the 250 Acre Residential Zoned Land.

17 (k) The term “writing”, and the plural form thereof, means the original (or any copies
18 when originals are not available) and any nonidentical copies (whether different from originals by
19 reason of notation made on such copies or otherwise) or any book, pamphlet, periodical, letter,
20 report, note, memorandum, correspondence, record, minutes, log, diary, study, compilation, analysis,
21 tabulation, map, diagram, drawing, plan, picture, photograph, summary, working paper, chart, paper,
22 graph, index, data sheet, data processing card, computer run, summary of computer run, computer
23 disc, floppy disk, hard disk, tape, contract, agreement, lease, ledger, journal, balance sheet, account,
24 invoice, purchase order, receipt, billing record, diary, film, trip ticket, telex, facsimile, teletype
25 message, expense voucher, instructions, bulletins, or any other message or writing, however
26 produced or reproduced, and includes any mechanical recording or reproduction of any oral material.

1 (l) The term “you,” and its plural, or any synonym thereof, shall mean Defendant,
2 including but not limited to all of its present or past agents, employees, representatives, consultants,
3 managers, members, insurers, successors, assigns, and, unless privileged, attorneys and accountants,
4 and its parent, subsidiary, and affiliated companies, corporations, and business entities, and all other
5 natural persons or business or legal entities acting or purporting to act for or on behalf of Defendant,
6 whether authorized to do so or not, and all others who are in possession of or may have obtained
7 information on behalf of Defendant as context dictates.

8 **INSTRUCTIONS**

9 1. Each Request should be construed independently. No Request should be construed
10 by reference to any other Request if the result is a limitation of the scope of the response to such
11 Request.

12 2. When a Request calls for a response in more than one part, each part should be
13 separate so that the answer is clearly understandable.

14 3. Whenever you are unable to provide a response to these Requests based upon your
15 personal knowledge, provide what you believe the correct response to be, and the facts upon which
16 you base your response.

17 4. If you object to a Request, either in whole or in part, or if the documentation
18 regarding the response to a Request is withheld on the grounds of privilege or otherwise, please set
19 forth fully each and every objection, describing generally the document withheld and set forth the
20 exact ground upon which you rely with such specificity as will permit the court to determine the
21 legal sufficiency of your objection or position upon a motion to compel.

22 5. The singular form of a word shall be interpreted as plural and the plural form of a
23 word shall be interpreted as singular whenever appropriate in order to bring within the scope of these
24 Requests any information or documents which might otherwise be considered to be beyond their
25 scope.

26 6. All documents are to be divulged which are in your possession or control, or can be
27 ascertained upon reasonable investigation of the areas within your control. The knowledge of any
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1 of your attorneys, if any, is deemed to be your knowledge of the documents sought to be produced
2 herein, and said knowledge must be incorporated into these responses, even if such documentation
3 is personally unknown by you.

4 7. These Requests are continuing in nature, and you are therefore requested to
5 supplement your production to each of these Requests with any information that you obtain
6 following your initial production hereto that would reasonably be deemed to be within the scope of
7 these Requests.

8 **REQUEST FOR PRODUCTION NO. 1:**

9 Identify and produce any and all documents, including but not limited to, the entire and
10 complete file in the possession of the City of Las Vegas, the applications, minutes from the meetings,
11 any and all communications (electronic or other), correspondence, letters, minutes, memos,
12 ordinances, and drafts related directly or indirectly to the following:

- 13 A. The 1985 City of Las Vegas General Land Use Plan, including land use map, adopted
14 January 16, 1985.
- 15 B. The Peccole Property Land Use Plan or Venetian Foothills Preliminary Development
16 Plan, 1986.
- 17 C. The consideration and/or adoption by the City of Las Vegas of the Venetian Foothills
18 conceptual plan or the Master Development Plan for the Venetian Foothills.
- 19 D. City of Las Vegas zoning file No. Z-00030-86, including the April 22, 1986 City
20 Planning Commission hearing, the May 7, 1986 City Council hearing, and the May
21 27, 1986 City Planning Commission hearing.
- 22 E. City of Las Vegas zoning file No. Z-139-89.
- 23 F. The consideration and/or adoption by the City of Las Vegas of the "Peccole Ranch
24 Master Plan, A Master Plan Amendment and Phase Two Re-zoning Application,"
25 dated February 6, 1990.
- 26 G. City of Las Vegas zoning file No. Z-17-90, including but not limited to the March 8,
27 1990 City Planning Commission hearing, and the April 4, 1990 City Council hearing.

- 1 H. City of Las Vegas zoning files Nos. Z-17-90 (1) through Z-17-90 (10), inclusive.
- 2 I. Master Development Plan Amendment, presented to the City Planning Commission,
- 3 March 8, 1990.
- 4 J. The updated City of Las Vegas Master Plan for the area within which the Subject
- 5 Property is located, dated March 12, 1992.
- 6 K. Southwest Sector Land Use Plan, dated January 5, 2007.
- 7 L. City of Las Vegas ZVL-57350 (Zoning Verification Letters, dated December 30,
- 8 2014).
- 9 M. Letter dated September 4, 1996, from Clyde O. Spitze to Robert Genzer, Re:
- 10 Badlands Golf Course, Phase 2.
- 11 N. Letter dated October 8, 1996 from Robert S. Genzer to Clyde O. Spitze, Re:
- 12 Badlands Golf Course, Phase 2.
- 13 O. City of Las Vegas zoning file TM-82-96.
- 14 P. GPA - 68385
- 15 Q. WVR - 68480
- 16 R. SDR - 68481
- 17 S. TMP - 68482
- 18 T. The Master Development Agreement for the 250 Acre Residential Zoned Land,
- 19 which was denied and/or stricken at the August 2, 2017 City Council meeting, more
- 20 fully identified as item 53-DIR - 70539 and item 31-Bill No. 2017-27 on the City
- 21 Council Agenda for August 2, 2017.
- 22 U. City of Las Vegas Bill No. 2018-5
- 23 V. City of Las Vegas Bill No. 2018-24
- 24 W. The request for access to the Subject Property, permit L17-00198.
- 25 X. The request to construct a fence on the Subject Property, permit C17-01047.
- 26 Y. WVR - 72004
- 27 Z. SDR - 72005

1 AA. TMP - 72006
2 BB. WVR - 72007
3 CC. SDR - 72008
4 DD. TMP - 72009
5 EE. WVR - 72010
6 FF. SDR - 72011
7 GG. TMP - 72012
8 HH. GPA - 72220
9 II. Bill No. Z-2001-1, Ordinance 5353.

10
11 **REQUEST FOR PRODUCTION NO. 2:**

12 Identify and produce a complete copy of the 2007 City of Las Vegas General Land Use Plan
13 and any and all documents, including the entire and complete file in the possession of the City of Las
14 Vegas, the applications, minutes from any the meetings, any and all communications,
15 correspondence, letters, minutes, memos, ordinances, and drafts related directly or indirectly to the
16 2007 City of Las Vegas General Land Use Plan.

17 **REQUEST FOR PRODUCTION NO. 3:**

18 Identify and produce a complete copy of the City of Las Vegas 2020 Master Plan and any
19 drafts thereto, including the entire and complete file in the possession of the City of Las Vegas, the
20 applications, minutes from the meetings, any and all communications, correspondence, letters,
21 minutes, memos, ordinances, and drafts related directly or indirectly to the City of Las Vegas 2020
22 Master Plan.

23 **REQUEST FOR PRODUCTION NO. 4:**

24 Identify and produce a complete copy of every City of Las Vegas master / land use plan for
25 the area within which the Subject Property is located or which includes the Subject Property from
26 1983 to present and any drafts thereto, including the entire and complete file in the possession of the
27 City of Las Vegas, the applications, minutes from the meetings, any and all communications,
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1 correspondence, letters, minutes, memos, ordinances, and drafts related directly or indirectly to the
2 City of Las Vegas master / land use plan from 1983 to present.

3 **REQUEST FOR PRODUCTION NO. 5:**

4 Identify and produce a complete copy of every City of Las Vegas Zoning Atlas Map from
5 1983 to present for the area within which the Subject Property is located or which includes the
6 Subject Property and any drafts thereto, including the entire and complete file in the possession of
7 the City of Las Vegas, the applications, minutes from the meetings, any and all communications,
8 correspondence, letters, minutes, memos, ordinances, and drafts related directly or indirectly to these
9 City of Las Vegas Zoning Atlas Maps from 1983 to present.

10 **REQUEST FOR PRODUCTION NO. 6:**

11 Identify and produce a list / summary of every instance where an application was submitted
12 to the City to use property, the use of the property identified in the application was consistent with
13 the then existing zoning designation and/or the City of Las Vegas Zoning Atlas Map and the City
14 denied the request from 1986 to present. Please include in the list / summary a reference to the City
15 of Las Vegas zoning file where the action was taken.

16 **REQUEST FOR PRODUCTION NO. 7:**

17 Identify and produce a list / summary of every instance where an application was submitted
18 to the City to use property, the use of the property identified in the application was consistent with
19 the then existing zoning designation and/or the City of Las Vegas Zoning Atlas Map, but the use was
20 inconsistent with the land use designation on the City's master plan and/or land use plan and the City
21 applied the designation on the City's master plan and/or land use plan over the then existing zoning
22 designation and/or City of Las Vegas Zoning Atlas Map to deny the application to use the property
23 from 1986 to present. Please include in the list / summary a reference to the City of Las Vegas
24 zoning file where the action was taken.

25 **REQUEST FOR PRODUCTION NO. 8:**

26 Identify and produce any and all documents, including but not limited to, the entire and
27 complete file in the possession of the City of Las Vegas, the applications, minutes from the meetings,
28 any and all communications (electronic or other), correspondence, letters, minutes, memos,

ordinances, and drafts related directly or indirectly to the “Peccole Ranch Master Plan,” (Plan) including but not limited to the passage or adoption of the Plan, the changes to any boundaries applicable to the Plan, any major modifications to the Plan, and general plan amendments to the Plan, and/or any zone changes related to the Plan from the period 1990 to present.

REQUEST FOR PRODUCTION NO. 9:

Identify and produce every document in the possession list / summary of every instance where an application was submitted to the City to use property within the geographic area of the “Peccole Ranch Master Plan” where the application and/or request to use the property was inconsistent or contrary to the land use designation on the “Peccole Ranch Master Plan” and the City required the applicant to submit / file a major modification application with the City to modify the land use designation on the “Peccole Ranch Master Plan” from 1986 to present. Please include in the list / summary a reference to the City of Las Vegas zoning file where the action was taken.

REQUEST FOR PRODUCTION NO. 10:

Identify and produce each and every document, communication, email, memo, correspondence, and/or text sent to or sent from any member of the City Council, any Staff member of the City of Las Vegas and/or any member of the City of Las Vegas City Attorney’s Office from 2015 to present that is related to the Subject Property, the Badlands Golf Course, the 250 Acre Residential Zoned Land and/or any application to develop the entire or any part of the Subject Property, the Badlands Golf Course, and/or the 250 Acre Residential Zoned Land.

REQUEST FOR PRODUCTION NO. 11:

Identify and produce each and every document, communication, email, memo, correspondence, and/or text sent to or sent from any member of the City Council, any Staff member of the City of Las Vegas and/or any member of the City of Las Vegas City Attorney’s Office from 2015 to present that is related to the identification or suggestion of funds to purchase the Subject Property, the Badlands Golf Course, and/or the 250 Acre Residential Zoned Land.

REQUEST FOR PRODUCTION NO. 12:

Identify and produce each and every document, communication, email, memo, correspondence, and/or text sent to or sent from any member of the City Council, any Staff member

of the City of Las Vegas and/or any member of the City of Las Vegas City Attorney's Office from 1986 to present that is related to the identification or suggestion of a PR-OS designation on all or any part of the Landowners' Property and/or all or any part of the 250 Acre Residential Zoned Land.

REQUEST FOR PRODUCTION NO. 13:

Identify and produce each and every City of Las Vegas guideline, instruction, process and/or procedure for adopting a land use designation on the City of Las Vegas General Plan Land Use Element and/or Master Plan, including the guideline, instruction, process and/or procedure applicable for each and every year from 1986 to present.

REQUEST FOR PRODUCTION NO. 14:

Identify and produce each and every document in your possession or at the City of Las Vegas which supports or shows how the City of Las Vegas guideline, instruction, process and/or procedure was implemented to place a designation of PR-OS or any similar open space designation on all or any part of the Landowners' Property and/or the 250 Acre Residential Zoned Land on the City of Las Vegas General Plan Land Use Element and/or Master Plan from 1986 to present.

REQUEST FOR PRODUCTION NO. 15:

Identify and produce the City of Las Vegas Code section and/or any other City document which provides each and every guideline, instruction, process and/or procedure that the City of Las Vegas requires for a major modification application including the City document(s) identifying each and every guideline, instruction, process and/or procedure applicable for a major modification application for each and every year from 2014 to present.

DATED this 15th day of April, 2019.

LAW OFFICES OF KERMIT L. WATERS

By: /s/ Autumn Waters, Esq.

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Attorneys for Plaintiff Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited liability company, DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, and DOE LIMITED LIABILITY COMPANIES I through X,)	Case No.: A-17-758528-J
)	Dept. No.: XVI
Plaintiffs,)	
CITY OF LAS VEGAS, a political subdivision of the State of Nevada, ROE government entities I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental I through X,)	
Defendants.)	

PLAINTIFF LANDOWNERS' EARLY CASE CONFERENCE

INITIAL DISCLOSURES FOR PHASE I - LIABILITY PURSUANT TO NRCP 16.1

TO: THE CITY OF LAS VEGAS, Defendant; and

TO: COUNSEL OF RECORD FOR THE CITY OF LAS VEGAS

Plaintiff 180 LAND COMPANY, LLC (hereinafter "Landowners"), by and through their counsel of record, the Law Offices of Kermitt L. Waters, hereby submits its 16.1 Early Case Conference Disclosures for Phase I - Liability as follows:

A. NRCP Rule 16.1(a)(1)(A) disclosure: The name and, if known, the address and telephone number of each individual likely to have information discoverable under Rule 26(b), including for impeachment or rebuttal, identifying the subjects of the information:

1. Person Most Knowledgeable at the City of Las Vegas
c/o Las Vega City Attorney's Office
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101

Person Most Knowledgeable at the City of Las Vegas regarding the City's guidelines, instructions, process and/or procedures for adopting a land use designation on the City of Las Vegas General Plan Land Use Element and/or Master Plan, including the guidelines, instructions, process and/or procedures applicable for each and every year from 1986 to present.

2. Person Most Knowledgeable at the City of Las Vegas
c/o Las Vega City Attorney's Office
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101

Person Most Knowledgeable at the City of Las Vegas regarding the City of Las Vegas guidelines, instructions, process and/or procedures implemented to place a designation of PR-OS or any similar open space designation on all or any part of the Landowners' Property and/or the 250 Acre Residential Zoned Land on the City of Las Vegas General Plan Land Use Element and/or Master Plan from 1986 to present.

3. Person Most Knowledgeable at the City of Las Vegas
c/o Las Vega City Attorney's Office
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101

Person Most Knowledgeable at the City of Las Vegas regarding the Master Development Agreement referenced in the Landowners' Complaint.

4. Person Most Knowledgeable at the City of Las Vegas
c/o Las Vega City Attorney's Office
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101

Person Most Knowledgeable at the City of Las Vegas regarding the major modification process.

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1 5. Steve Seroka
2 c/o Las Vega City Attorney's Office
3 495 S. Main Street, 6th Floor
4 Las Vegas, Nevada 89101

5 Mr. Seroka may have information regarding the facts and circumstances surrounding the
6 allegations alleged in the Landowners' Complaint which occurred while Mr. Seroka was running for
7 the City Council and while Mr. Seroka was on the City Council.

8 6. Person Most Knowledgeable
9 180 LAND COMPANY, LLC
10 c/o Law Offices of Kermitt L. Waters
11 704 South Ninth Street
12 Las Vegas Nevada 89101

13 Person Most Knowledgeable at 180 Land Company, LLC regarding the facts and
14 circumstances surrounding the allegations alleged in the Landowners' Complaint as it relates to
15 Phase 1 of discovery, liability.

16 7. Person Most Knowledgeable
17 FORE STARS, Ltd
18 c/o Law Offices of Kermitt L. Waters
19 704 South Ninth Street
20 Las Vegas Nevada 89101

21 Person Most Knowledgeable at FORE STARS, LTD regarding the facts and circumstances
22 surrounding the allegations alleged in the Landowners' Complaint as it relates to Phase 1 of
23 discovery, liability.

24 8. Person Most Knowledgeable
25 SEVENTY ACRES, LLC
26 c/o Law Offices of Kermitt L. Waters
27 704 South Ninth Street
28 Las Vegas Nevada 89101

Person Most Knowledgeable at Seventy Acres, LLC regarding the facts and circumstances
surrounding the allegations alleged in the Landowners' Complaint as it relates to Phase 1 of
discovery, liability.

B. NRCP Rule 16.1(a)(1)(B) disclosure: A copy of, or a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and which are discoverable under Rule 26(b):

**INDEX TO PLAINTIFF LANDOWNERS' EARLY CASE CONFERENCE
DISCLOSURES PURSUANT TO NRCP 16.1**

Exhibit No.	Exhibit Description	Vol. No.	Bates No.
1	Map of 250 Acre Residential Zoned Land Identifying Each Parcel	1	LO 00000001
2	Bill No. Z-2001-1: Ordinance No. 5353 Dated 8.15.2001	1	LO 00000002-00000083
3	12.30.14 Letter City of Las Vegas to Frank Pankratz "Zoning Verification" letter	1	LO 00000084
4	11.16.16 City Council Meeting Transcript Items 101-107	1-2	LO 00000085-00000354
5	6.21.17 City Council Meeting Transcript Items 82, 130-134	2	LO 00000355-00000482
6	5.16.18 City Council Meeting Transcript Items 71, 74-83	2-3	LO 00000483-00000556
7	Notice of Entry of Findings of Fact, Conclusions of Law, Final Order and Judgment, Eighth Judicial District Court Case No. A-16-739654-C filed 1.31.17	3	LO 00000557-00000601
8	Intentionally left blank	3	LO 00000602-00000618
9	12.7.16 Letter From Jimmerson to Jerbic	3	LO 00000619-00000627
10	City of Las Vegas' Answering Brief, Eighth Judicial District Court Case No. A-17-752344-J filed 10.23.17	3	LO 00000628-00000658
11	7.12.16 City of Las Vegas Planning Commission Meeting Transcript excerpts Items 4, 6, 29-31, 32-35	3	LO 00000659-00000660
12	Staff Recommendation 10.18.16 Special Planning Commission Meeting	3	LO 00000661-00000679
13	10.18.16 Special Planning Commission Meeting Agenda Items 10-12 Summary Pages	3	LO 00000680-00000685
14	2.15.17 City Council Meeting Transcript Items 100-102	3-4	LO 00000686-00000813
15	LVMC 19.10.040	4	LO 00000814-00000816
16	LVMC 19.10.050	4	LO 00000817-00000818
17	Staff Recommendation 2.15.17 City Council Meeting GPA-62387, ZON-62392, SDR-62393	4	LO 00000819-00000839

18	2.15.17 City Council Agenda Summary Pages Items 100-102	4	LO 00000840-00000846
19	Seroka Campaign Contributions	4	LO 00000847-00000895
20	Crear Campaign Contributions	4	LO 00000896-00000929
21	2.14.17 Planning Commission Transcript Items 21-14 portions with video still	4	LO 00000930-00000931
22	35 Acre Applications: SDR-68481; TMP- 68482; WVR-68480	4	LO 00000932-00000949
23	Staff Recommendation 6.21.17 City Council Meeting GPA-68385, WVR-68480, SDR-68481, TMP 68482	4	LO 00000950-00000976
24	8.2.17 City Council Meeting Transcript Item 8 (excerpt) and Items 53 and 51	4-5	LO 00000977-00001131
25	MDA Combined Documents	5	LO 00001132-00001179
26	Email between City Planning Section Manager, Peter Lowenstein, and Landowner representative Frank Pankratz dated 2.24.16	5	LO 00001180-00001182
27	Email between City Attorney Brad Jerbic and Landowner's land use attorney Stephanie Allen, dated 5.22.17	5	LO 00001183-00001187
28	16 versions of the MDA dating from January, 2016 to July, 2017	5-7	LO 00001188-00001835
29	The Two Fifty Development Agreement's Executive Summary	8	LO 00001836
30	City requested concessions signed by Landowners representative dated 5.4.17	8	LO 00001837
31	Badlands Development Agreement CLV Comments, dated 11-5-15	8	LO 00001838-00001845
32	Two Fifty Development Agreement (MDA) Comparison – July 12, 2016 and May 22, 2017	8	LO 00001846-00001900
33	The Two Fifty Design Guidelines, development Standards and Uses, comparison of the March 17, 2016 and May, 2017 versions	8	LO 00001901-00001913
34	Seroka Campaign Literature	8	LO 00001914-00001919
35	2017-12-15 Thoughts on: Eglet-Prince Opioid Proposed Law Suit	8	LO 00001920-00001922
36	Tax Assessor's Values for 250 Acre Residential Land	8	LO 00001923-00001938

37	City's Motion to Dismiss Eighth Judicial District Case No. A-18-773268-C, filed 7/2/18	8	LO 00001939-00001963
38	1.11.18 Hearing Transcript, Eighth Judicial District Court Case No. A-17-752344-J	8-9	LO 00001964-00002018
39	City's Motion to Dismiss Eighth Judicial District Case No. A-18-775804-J, filed 8.27.18	9	LO 00002019-00002046
40	Staff Recommendation 6.21.17 City Council Meeting DIR-70539	9	LO 00002047-00002072
41	9.6.17 City Council Meeting Agenda Summary Page for Item No. 26	9	LO 00002073-00002074
42	9.4.18 meeting submission for Item No. 4 by Stephanie Allen	9	LO 00002075
43	5.16.18 City Council Meeting Agenda Summary Page for Item No. 66	9	LO 00002076-00002077
44	5.16.18 City Council Meeting Transcript Item No. 66	9	LO 00002078-00002098
45	Bill No. 2018-5 "Proposed First Amendment (5-1-18 Update)"	9	LO 00002099-00002105
46	Bill No. 2018-24	9	LO 00002106-00002118
47	October/November 2017 Applications for the 133 Acre Parcel: GPA-7220; WVR-72004, 72007, 72010; SDR-72005, 72008, 72011; TMP-72006, 72009, 72012	9-10	LO 00002119-00002256
48	Staff Recommendation 5.16.18 City Council Meeting GPA-72220	10	LO 00002257-00002270
49	11.30.17 Justification Letter for GPA-72220	10	LO 00002271-00002273
50	2.21.18 City Council Meeting Transcript Items 122-131	10	LO 00002274-00002307
51	5.16.18 City Council Meeting Agenda Summary Page for Item Nos. 74-83	10	LO 00002308-00002321
52	3.21.18 City Council Meeting Agenda Summary Page for Item No. 47	10	LO 00002322-00002326
53	5.17.18 Letters from City to Applicant Re: Applications Stricken	10	LO 00002327-00002336
54	Coffin Email	10	LO 00002337-00002344
55	8.10.17 Application For Walls, Fences, Or Retaining Walls Single Lot Only	10	LO 00002345-00002352
56	8.24.17 Letter from City of Las Vegas to American Fence Company	10	LO 00002353

57	LVMC 19.16.100	10	LO 00002354-00002358
58	6.28.16 Letter from Mark Colloton to Victor Bolanos, City of Las Vegas public Works Dept.	10	LO 00002359-00002364
59	8.24.17 Letter from the City of Las Vegas to Seventy Acres, LLC	10	LO 00002365
60	1990 Peccole Ranch Master Plan	10	LO 00002366-00002387
61	1.3.18 City Council Meeting Transcript Item No. 78	10	LO 00002388-00002470
62	Exhibit F-1 2.22.16 with annotations	10	LO 00002471-00002472
63	Southern Nevada GIS – OpenWeb Info Mapper Parcel Information	10-11	LO 00002473-00002543
64	Southern Nevada GIS – OpenWeb Info Mapper Parcel Information	11	LO 00002544-00002545
65	Email between Frank Schreck and George West 11.2.16	11	LO 00002546-00002551
66	Master Declaration of Covenants, Conditions, Restrictions and Easement For Queensridge	11	LO 00002552-00002704
67	Amended and Restated Master Declaration of Covenants, Conditions, Restrictions and Easement For Queensridge effective 10.1.2000	11	LO 00002705
68	Findings of Fact, Conclusions of Law and Judgment Granting Defendants Fore Stars, LTD., 180 Land Co LLC, Seventy Acres LLC, EHB Companies LLC, Yohan Lowie, Vickie Dehart and Frank Prankratz's NRCp 12(b)(5) Motion to Dismiss Plaintiffs' Amended Complaint, Eighth Judicial District Court Case No. A-16-739654-C Filed 11.30.16	11	LO 00002706-00002730
69	Custom Lots at Queensridge North Purchase Agreement, Earnest Money Receipt and Escrow Instructions	11	LO 00002731-00002739
70	Land Use Hierarchy Exhibit	11	LO 00002740
71	2.14.17 Planning Commission Transcript Agenda Items 21-14	11-12	LO 00002741-00002820
72	Order Granting Plaintiffs' Petition for Judicial Review Eighth Judicial District Court Case No. A-17-752344-J filed 3.5.18	12	LO 00002821-00002834

73	City of Las Vegas' Reply In Support of Its Motion to Dismiss and Opposition To Petitioner's Countermotion to Stay Litigation, Eighth Judicial District Court Case No. A-17-758528-J filed on 12.21.17	12	LO 00002835-00002840
74	Notice of Entry of Order Denying Motion to Dismiss and [Granting] Countermotion to Stay Litigation, Eighth Judicial District Court Case No. A-17-758528-J filed on 2.2.18	12	LO 00002841-00002849
75	Complaint in Eighth Judicial District Court Case No. A434337 filed 5.7.01	12	LO 00002850-00002851
76	Email	12	LO 00002852
77	6.13.17 PC Meeting Transcript	12	LO 00002853-00002935
78	1.23.17 onsite Drainage Agmt.	12	LO 00002936-00002947
79	9.11.18 PC – Hardstone Temp Permit Transcript	12	LO 00002948-00002958
80	Estate Lot Concepts	12	LO 00002959-00002963
81	Text Messages	12	LO 00002964-00002976
82	Intentionally left blank	12	Not bates stamped
83	Judge Smith Nov. 2016 Order	13	LO 00002977-00002982
84	Supreme Court Affirmance	13	LO 00002983-00002990
85	City Confirmation of R-PD7	13	LO 00002991-00003020
86	De Facto Case Law	13	LO 00003021-00003023
87	Johnson v. McCarran	13	LO 00003024-00003026
88	Boulder Karen v. Clark County	13	LO 00003027-00003092
89	Supreme Court Order Dismissing Appeal <i>in part</i> and Reinstating Briefing	13	LO 00003093-00003095
90	Bill No. 2018-24	13	LO 00003096-00003108
91	July 17, 2018 Hutchinson Letter in Opposition of Bill 2018-24	13	LO 00003109-00003111
92	October 15, 2018 Allen Letter in Opposition to Bill 2018-24 (Part 1 of 2)	13-14	LO 00003112-00003309
93	October 15, 2018 Allen Letter in Opposition to Bill 2018-24 (Part 2 of 2)	14-15	LO 00003310-00003562
94	Minutes from November 7, 2018 Recommending Committee Re Bill 2018-24	15	LO 00003563-00003564
95	Verbatim Transcript from October 15, 2018 Recommending Committee Re Bill 2018-24	15	LO 00003565-00003593

96	Minutes from November 7, 2018 City Council Hearing Re Bill 2018-24	15	LO 00003594-00003595
97	Verbatim Transcript from November 7, 2018 City Council Meeting Adopting Bill 2018-24	15-16	LO 00003596-00003829
98	Supreme Court Order Denying Rehearing	16	LO 00003830-00003832
99	Deposition of Greg Steven Goorjian	16	LO 00003833-00003884
100	2019.01.07 Robert Summerfield Email	16	LO 00003885
101	2019.02.06 Judge Williams' Order Nunc Pro Tunc Regarding Findings of Fact and Conclusion of Law Entered November 21, 2019	16	LO 00003886-00003891
102	2019.02.15 Judge Sturman's Minute Order re Motion to Dismiss	16	LO 00003892
103	2019.01.23 Judge Bixler's Transcript of Proceedings	16	LO 00003893-00003924
104	2019.01.17 Judge Williams' Recorder's Transcript of Plaintiff's Request for Rehearing	16	LO 00003925-00003938
105	Approved Land Uses in Peccole Conceptual Plan	16	LO 00003939
106	2020 Master Plan – Southwest Sector Zoning	16	LO 00003940
107	35 Acre in Relation to Pecocole Plan	16	LO 00003941
108	CLV Hearing Documents on Major Modifications	17	LO 00003942-00004034
109	GPA Code and Application	17	LO 00004035-00004044

C. A computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary matter, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered:

Objection: The Landowners object to disclosing the computation of any category of “damages” at this time as this information requires the preparation of expert reports that will be produced in the normal course of discovery as provided in the Nevada Discovery Rules. The Landowners further object to disclosing any category of “damages” as discovery has been bifurcated,

1 the damages/just compensation phase of discovery has not commenced yet. Additionally, the
2 computation of any category of “damages” may contain attorney work product, privileged
3 information, and may require legal instructions or court rulings, accordingly, the same cannot be
4 produced at this time.

5 The Landowners will disclose their expert opinions/testimony regarding the just
6 compensation owed pursuant to NRCP 16.1(a)(2) and in accordance with the scheduling order set
7 in this matter.

8 **D. For inspection and copying as under Rule 34 any insurance agreement under which**
9 **any person carrying on an insurance business may be liable to satisfy party or all of**
10 **a judgment which may be entered in the action to indemnify or reimburse for payments**
11 **made to satisfy the judgment and any disclaimer or limitation of coverage or**
12 **reservation or frights under any such insurance agreement:**

13 N/A

14 The Landowners incorporate by reference herein all witnesses and documents disclosed by
15 other parties to this action. The Landowners further reserve the right to supplement and/or amend
16 these disclosures as discovery continues. The Landowners also reserve the right to object to the
17 introduction and/or admissibility of any document at the time of trial.

18 DATED this 15th day of April, 2019

19 **LAW OFFICES OF KERMIT L. WATERS**

20 By: /s/ Autumn Waters

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